



00061858

Report of the Honourable G. A. Gale
to The Honourable The Attorney General
of Ontario with respect to some aspects
of The Provincial Courts Act

June 28, 1978

KF
8776
G34
1978
c.1

Gale, George Alexander, 1906
Report of the Honourable G.A. Gale
to the Honourable the Attorney
General of Ontario with respect to
some aspects of the Provincial Courts
act

mem 61952

KF
8776
G34
1978
c.1

Gale, George Alexander, 1906
Report of the Honourable G.A. Gale
to the Honourable the Attorney
General of Ontario with respect to
some aspects of the Provincial Courts
act

MINISTRY OF THE
ATTORNEY GENERAL
LAW LIBRARY

MINISTRY OF THE
ATTORNEY GENERAL
LAW LIBRARY

THE SUPREME COURT OF ONTARIO

THE HONOURABLE W. G. C. HOWLAND

CHIEF JUSTICE OF ONTARIO



OSGOODE HALL
TORONTO, ONTARIO M5H 2N5
363-4101

June 11, 1985

The Hon. Alan W. Pope, Q.C.,
Attorney General for Ontario,
18th Floor,
18 King Street East,
Toronto, Ontario,
M5C 1C5.

Dear Mr. Attorney,

I am pleased to enclose a copy of a report of the Honourable G.A. Gale to your predecessor, dated June 28, 1978 with respect to the Provincial Courts Act.

The Librarian in your Library has requested a copy of this report and I am not certain whether or not it is a public document.

Yours very sincerely,

A handwritten signature in dark ink, appearing to read "G.A. Gale".

Encl.

Report of the Honourable G. A. Gale
to The Honourable The Attorney General
of Ontario with respect to some aspects
of The Provincial Courts Act

June 28, 1978

2712
1877 163 1972 \$1.00 \$0.2



Digitized by the Internet Archive
in 2017 with funding from
Ontario Council of University Libraries

https://archive.org/details/mag_00061858

INDEX

	Page
I Introduction	1
II Present Functions of the Judicial Council	4
III Issues with Respect to the Reform of The Provincial Courts Act	12
A. Qualifications of Individuals Appointed as Judges	13
B. Grounds for Removal of Judges	16
C. Issues Related to the Functions of the Judicial Council	19
1. The Composition of the Judicial Council	21
2. The Consideration of Proposed Appointments:	
section 8(1)(a)	24
3. The Investigation of Complaints and Recommendations	
thereon to the Attorney General: section 8	25
(a) Problems of Interpretation of Sections 4 and 8	26
(b) The Function of the Judicial Council:	
<i>Investigation and Inquiry</i>	29
(c) Issues Related to Investigations by the Judicial	
Council under Section 8	38
(i) Public Access to Proceedings before the	
Judicial Council	39
(ii) Reports of the Judicial Council of the	
Disposition of Matters Before It	41
(iii) The Public Inquiries Act: section 8(5)	44
(iv) The Rights of a Judge during an Investiga-	
tion	45
(v) Resignation of the Judge: section 6	46

Index

	2.
	Page
(vi) Counsel and Secretary to the Council	47
(vii) Powers of Reprimand and Exoneration	50
(viii) Costs	52
(ix) Report to Judges on the Investigations Conducted by the Council	53
D. Issues Related to the Inquiry: Section 4(2)	55
1. Conduct of the Inquiry	56
(a) Number of Justices	56
(b) Rights of the Judge	56
(c) The Public Inquiries Act	58
2. Suspension of a Judge Pending an Inquiry	64
3. Powers of the Inquiry	65
4. Right of Appeal	67
5. Costs	69
6. Report of the Inquiry	70
E. Other Issues	70
1. Extra-Judicial Employment of Provincial Court Judges	70
2. Submissions of the Provincial Judges Association	71
IV Summary of Recommendations	72

I

INTRODUCTION

1. A study that involves an examination of the appointment and the method of discipline of judges is both a difficult and a sensitive one. Respect for the judiciary and confidence by the public in the due administration of justice are fundamental to the successful functioning of our society. But such respect and confidence can only be achieved if it is perceived that individuals of high quality are appointed to judicial office and that, as judges, these individuals continue to be guided by the highest of standards. Mr. Justice Grant of the Supreme Court of Ontario has described eloquently the importance of the judicial function:¹

. . . The quality of the judiciary to a great extent determines the quality of justice. The court is more than an instrument of justice. It also enjoys an important educational and symbolic significance. It is called upon to articulate the community's views concerning the individual's rights in relation to the rest of society. Courts can only be as effective as the judges who preside over them. It is because of this that society expects much of its magistracy.

2. In our system of government, the appointment of judges, and their removal, in the rare instances where this has become necessary, is the responsibility of the government in power. However, it has long been thought desirable that appointments to judicial office should be seen to be free of purely political considerations and rather should be based on the fitness of the person to assume office.

1. Inquiry re Magistrate Frederick J. Bannon and Magistrate George W. Gardhouse (1968), at p. 52 (hereafter cited as Inquiry Re Bannon).

Similarly, it has been thought that it is imperative that on those occasions when the removal of a judge from office is necessitated, no consideration other than his or her incapacity to continue in office should have influenced the decision.

3. In Ontario, we are fortunate to have had the benefit of the wisdom and integrity of the Honourable J. C. McRuer brought to bear on this matter in his report on civil rights.² It was he who recommended establishing a council to advise the Attorney General with respect to appointment of judges of the Provincial Courts and to deal with, at least in the first instance, complaints and allegations concerning misconduct of judges. Moreover, he stressed, and, in my respectful opinion, very rightly stressed, the importance of the function of provincial court judges (then called magistrates) both because of the volume of legal matters with which they dealt and because, for many individuals, the only exposure to the administration of justice was the experience derived from appearing before those judges.

4. Largely because of the recommendations of the Honourable J. C. McRuer, The Provincial Courts Act was enacted in 1968. For convenience a copy of that Act in its original form is attached as Appendix A, and a copy of the Act in its present form is attached as Appendix B. The original section 8 was subsequently expanded in 1970

2. Report of the Royal Commission, Inquiry into Civil Rights, Report No. 1, Volume 2, Chapter 39, "The Magistrates' Courts: Qualifications and Functions of Magistrates"; see also Report No. 2, Volume 4, Chapter 93, "Complaints Concerning the Operation of the Courts". The report of that Royal Commission will hereafter be cited as the McRuer Report.

to its present form.³

5. From the outset, the Act contained many improvements for the administration of justice at the provincial court level. It also created a Judicial Council the functions of which are, as suggested by Mr. McRuer, firstly, to consider the proposed appointments of provincial court judges and to make a report thereon to the Attorney General and, secondly, to receive and investigate complaints concerning misbehaviour of, neglect of duty by, or inability of, judges to perform their duties, and, in the proper circumstances, to recommend to the Attorney General that a public hearing be conducted to inquire into allegations against a judge. It is the responsibilities and the functioning of the Judicial Council that will be the focus of this report.

6. Before dealing with the main issues in this report, I should say something concerning the work that was done to prepare for it. I have, of course, relied on my experience as the former Chief Justice of Ontario, and my experience as the former Chairman of the Judicial Council and as a member of the executive of the Canadian Judicial Council established under the federal Judges Act.⁴ I have written to and received assistance from the Chief Justices of all the provinces and I have made extensive reference to the relevant legislation in other provinces. Recourse has also been had to English law and I will make incidental reference in the report to some of the experience of the states of the United States

3. See The Provincial Courts Amendment Act, 1970, S.O. 1970, c. 38.

4. R.S.C. 1970, c.J-1, as amended.

(4)

7. I have had extensive communications and conversations with the following individuals and organizations for whose assistance I am deeply grateful: the present and most of the former members of the Judicial Council; justices who have conducted inquiries pursuant to section 4(2) of The Provincial Courts Act; counsel who have appeared before the Judicial Council and before inquiries under section 4(2) of the Act; the Honourable J. C. McRuer; representatives of the Provincial Judges Association (Criminal Division and Family Division); the Senior Master; a judge of the Small Claims Court; the Commissioner of Federal and Judicial Affairs; the Director, Constitutional, Administrative and International Law, the Department of Justice; the President of the Advocates Society; representatives of the editorial division of the Canadian Daily Newspaper Publishers Association.

II

Present Functions of the Judicial Council

8. Before dealing in detail with my review of the potential recommendations for changing the Act, it will be convenient to first outline in some detail the responsibilities and functions of the Judicial Council as it is constituted at present. As you are aware, in my capacity as Chief Justice of Ontario, I was Chairman of the Judicial Council from its inception in 1968 to my retirement in December 1976. The following account of the functions of the Judicial Council is based on my experience as its Chairman throughout that period. In addition, I have spoken with nearly all of the individuals

who have been members of the Judicial Council and to all the present members. Moreover, the present Judicial Council has been kind enough to permit me access to the files and records of the Judicial Council, on a confidential basis, for the purpose of this review.

9. Section 7(1) of the present Act stipulates the membership of the Judicial Council. It reads as follows:

The Judicial Council for Provincial Judges is continued and shall be composed of,

- (a) the Chief Justice of Ontario, who shall be chairman;
- (b) the Chief Justice of the High Court;
- (c) the chief judge of the Provincial Courts (Criminal Division);
- (d) the chief judge of the Provincial Courts (Family Division);
- (e) the Treasurer of the Law Society of Upper Canada; and
- (f) not more than two other persons appointed by the Lieutenant Governor in Council.

10. I should note that despite the provision in section 7(1)(f) for the appointment of "not more than two other persons", there has only been one such appointment, for a short period, since the Act has come into force. I have concluded that there is some significance to be attached to section 7(1)(f) and the availability for appointments thereunder and I will return to a discussion of this section below.

11. Section 8 of the Act sets out the functions of the Judicial

Council: It states:

- (1) The functions of the Judicial Council are,
 - (a) at the request of the Minister, to consider the proposed appointments of provincial judges and make a report thereon to the Minister;
 - (b) to receive complaints respecting the misbehaviour of or neglect of duty by judges or the inability of judges to perform their duties; and
 - (c) to take such action to investigate complaints as it considers advisable including the review thereof with the judge where appropriate, and to make such recommendations to the Minister with respect thereto as it sees fit.
- (2) The chairman may transmit such complaints as he considers appropriate to the chief judge of the Provincial Courts (Criminal Division) or the chief judge of the Provincial Courts (Family Division).
- (3) The Judicial Council may recommend to the Lieutenant Governor in Council that an inquiry be held under section 4.
- (4) The proceedings of the Judicial Council shall not be public, but it may inform and advise the Minister respecting matters that it has investigated or reviewed.
- (5) The Judicial Council has all the powers that may be conferred upon a commissioner under The Public Inquiries Act.
- (6) No action or other proceeding for damages shall be instituted against the Judicial Council or any member or officer thereof or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his duty.

12. Section 4 of the Act contains the grounds for removal and the procedure by which a judge may be removed from office. Section 4 states:

- (1) A judge may be removed from office before attaining retirement age only for misbehaviour or for

inability to perform his duties properly and only if,

- (a) the circumstances respecting the misbehaviour or inability are first inquired into; and
- (b) the judge is given reasonable notice of the time and place for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and of cross-examining the witnesses and of producing evidence on his own behalf.

(2) For the purpose of making an inquiry under subsection 1, the Lieutenant Governor in Council may appoint one or more judges of the Supreme Court who shall make the inquiry and report thereon, and a judge so appointed has all the powers that may be conferred upon a commissioner under The Public Inquiries Act.

(3) An order removing a judge from office under this section may be made by the Lieutenant Governor in Council and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next ensuing session.

13. The Small Claims Courts Act and The Judicature Act contain sections to the same effect as section 4 in respect of Small Claims Courts judges and masters of the Supreme Court, respectively, and it will be recalled that recent amendments to The Small Claims Courts Act⁵ and The Judicature Act⁶ have extended the functions of the

5. R.S.O. 1970, c. 439, s. 11, as amended by The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52, s. 2.

6. R.S.O. 1970, c. 228, s. 98, as amended by The Judicature Amendment Act, 1975, S.O. 1975, c. 30, s. 4. These changes apparently resulted from recommendations contained in the report of the Ontario Law Reform Commission, Report on Administration of Ontario Courts, Part III (1973). See the relevant discussion at p. 4 of that report.

Judicial Council to Small Claims Courts judges and masters of the Supreme Court, respectively. The report will frequently refer to "judges" but it should be read as also referring to masters where appropriate.

14. It should be noted that although section 8 of the Act imposes upon the Judicial Council the function of investigating complaints concerning the misconduct of judges and making recommendations to the Attorney General with respect thereto, in order to actually remove a judge from office it is necessary for an inquiry to be held under section 4(2). The significance of this distinction will be discussed, at some length, below.

15. Before dealing with the procedure that the Judicial Council has utilized in the past to deal with allegations of misconduct, it will be appropriate to first outline the methods by which the Council considers the proposed appointments of provincial court judges and reports thereon to the Attorney General. There are, of course, variations, but, generally speaking, when the Attorney General wishes the Judicial Council to consider the suitability of a candidate he simply advises the Council of the name of the individual and asks that he or she be considered. At this point the Council makes discreet inquiries and investigations. It then evaluates its research and decides whether or not to recommend the individual

for appointment. The recommendation of the Council is then communicated to the Attorney General. Generally speaking, the Council does not give reasons to the Attorney General why an individual is recommended or not recommended unless, in the circumstances, it is thought advisable. With very few exceptions the recommendations of the Judicial Council have been followed by the Attorney General.

16. With respect to the function of the Judicial Council regarding the investigation of allegations of misbehaviour of judges, it will now be appropriate to describe the procedures used when there have been such allegations. Generally speaking, it might be said that one of the difficulties with the present Act may be that it provides little guidance as to the procedure for investigating complaints concerning the misconduct of judges. On the other hand, the very absence of a code of procedure has allowed the Council to be flexible and deal with each allegation in a way that the Council considered most appropriate and most equitable. In carrying out its responsibilities, the Council has given emphasis to two requirements: firstly, to investigate thoroughly allegations of misbehaviour and to take decisive action in respect of those allegations that it concludes might be well-founded; secondly, to shield judges from ill-founded or irresponsible charges made against them. Moreover, I believe that the Council has always striven to maintain public confidence in the due administration of justice by discharging its duties in the fairest and yet most efficient manner possible.

17. For purposes of description of the procedure used by the Judicial Council in investigating allegations, it may be said that there have been three basic kinds of complaints and that these have usually been treated in the following manner, with allowance for the individual nature of any of these allegations. Firstly, there have been complaints received that were clearly frivolous or beyond the authority of the Judicial Council, as, for example, a complaint of a disgruntled litigant who was dissatisfied with the results of the case. These kinds of complaints were dealt with by the Chairman either after consultation with the rest of the Judicial Council or, on rare occasions, without such consultation. A report to the Attorney General was never made in these circumstances.

18. Secondly, complaints were received from the Attorney General, or from individuals, or from other sources, that appeared to have merit. In those instances an interview was arranged with the judge concerned and, if he so desired, his counsel. In many instances the interview was sufficient to satisfy the Council that the complaint was not well-founded or, in any event, that no further action was required. In these situations, a judge may have been criticized by the Council if the Council considered such criticism warranted; in any event, no further investigation was undertaken and a report was made to the Attorney General only when it was appropriate to do so. In instances where a report was made to the Attorney General a copy of it was given to the judge. However, on infrequent occasions

the interview indicated that there were grounds to believe that the judge may have engaged in misconduct sufficiently serious to consider his possible removal from office. In those situations the Council heard viva voce evidence pursuant to its powers under section 8(5) of the Act. When the Council heard such evidence the judge appeared with his counsel, witnesses were called and examined and cross-examined, and a reporter was present. In addition, the Judicial Council had a lawyer act as counsel to it. It was only after the hearing was completed that the Council reported to the Attorney General. In those instances where the Council heard viva voce evidence it did not necessarily recommend that an inquiry under section 4(2) of the Act should be held.

19. Thirdly, there have been situations when the Attorney General has requested the Council directly to hold an investigation into allegations of misconduct of a judge. In those situations, after determining that it would be necessary to hear evidence, the Council met with the judge to settle the details of procedure for the hearing. Only after the hearing was held did the Council report to the Attorney General.

20. In all cases in which detailed investigations were held, the judge concerned was advised orally of the result or was supplied with a copy of the report to the Attorney General. In only two instances has there been a recommendation by the Judicial Council that an inquiry

be held under section 4(2) of the Act. In both cases an inquiry was held and the justice of the Supreme Court holding the hearing recommended the judge's removal; in both cases the judge was subsequently removed.

21. Before leaving this part, I do wish to emphasize that the vast majority of complaints received by the Judicial Council have not necessitated a full-scale investigation by it and have been disposed of quite summarily after the Council was satisfied that the matter had been adequately investigated. In those cases - the majority of cases - neither the public nor the Attorney General, indeed, in some cases not even the judge himself, was aware that the matter was being investigated. For reasons that I will discuss later, it will be argued that this is a salutary practice that should, in any event, be continued.

III

Issues with Respect to the Reform of The Provincial Courts Act

22. I now turn to a discussion of the relevant issues with respect to the reform of The Provincial Courts Act. Before beginning these discussions may I say that my overall impression of the Act, generally, and of the work of the Judicial Council, in particular, is that the Act and the Council have functioned very well indeed. In my opinion, and this has been confirmed by the vast majority of people with whom I spoke, the Council has performed admirably

its dual function of considering potential appointments and investigating allegations of misbehaviour with respect to judges. In fact there is much to be said for leaving the Act unchanged. Nevertheless, I believe, there are some areas that might be improved and in which more guidance could be given to those who must carry out the duties and responsibilities imposed upon them by the Act.

A. Qualifications of individuals appointed as judges

23. Section 2 of the Act simply states the following:

The Lieutenant Governor in Council on the recommendation of the Minister may appoint such provincial judges as he considers necessary.

At one time there may have been some justification for provincial court judges (and their predecessors, magistrates) not to have been lawyers. Scarcity of qualified lawyers, a lower scale of remuneration and generally a simpler attitude toward the law may have, in the past, militated in favour of, or, indeed, even justified the appointment of provincial court judges who were not lawyers. However, the scope and complexity of matters within the jurisdiction of these judges, both of the criminal division and of the family division, leave one with little doubt that today all provincial court judges should be qualified lawyers. This conclusion is strengthened by noting that the Honourable J. C. McRuer in his report, referred to earlier, also recommended that all magistrates be lawyers and that special training in the law and social sciences be given to juvenile and family court judges.⁷ Several

7. The McRuer Report, footnote 2, supra, Vol. 2, at pp. 544, 562 and 570.

other provinces require that provincial court judges (or magistrates) be lawyers.⁸ In addition, the requirement of section 9(2) of the Act that a judge shall not exercise the powers conferred upon a magistrate under Part XVI of the Criminal Code unless, inter alia, he is or has been a member of the bar of one of the provinces virtually assures that provincial court judges (Criminal Division) will be qualified lawyers.⁹ It is my understanding that in recent years it has been an invariable practice to appoint only qualified lawyers. This is a laudable trend but it is now time that the matter be dealt with by legislation.

24. Having concluded that provincial court judges should be qualified lawyers, I wish to discuss also whether there should not be a requirement of a minimum number of years as a member of the bar before

8. The Provincial Judges Act, S.M. 1972, c. 61, Cap. C230, s. 2(2), as amended by S.M. 1977, c. 5, s. 1; Provincial Court Act, R.S.P.E.I. 1974, c. P-24, s.2 as amended by S.P.E.I., 1975, c. 78, s.3; The Magistrates' Courts Act, R.S.S. 1965, c. 110, s.4, The Provincial Magistrates Act, R.S.S. 1965, c. 111, s.6. As the final draft of this report was being prepared, the Legislature of Saskatchewan passed, on May 26, 1978, Bill No. 65, The Provincial Court Act, 1978. The bill has received Royal Assent but has not as yet been proclaimed in force. The Bill once proclaimed will have the effect of repealing The Magistrates' Courts Act and The Provincial Magistrates Act. The Bill will hereafter be cited as The Provincial Court Act, 1978, Bill No. 65, Sask.

9. One notes that in the original Act, The Provincial Courts Act, S.O. 1968, c. 105, s. 9(2)(a), it was stipulated, inter alia, that a judge could not exercise the powers under Part XVI of the Criminal Code unless he had been a member of the bar of one of the provinces of Canada for at least five years. When the Act was amended that provision was changed to stipulate that a judge need only be a member of the bar of one of the provinces of Canada without any reference to a minimum time.

an individual could be appointed. It is to be noted that in order to qualify for appointment as a judge under the federal Judges Act¹⁰ it is necessary, basically, to have been a member of the bar for ten years. Relevant statutes of Prince Edward Island¹¹ and Saskatchewan¹² require that to be appointed as a provincial court judge an individual must have been a member of the bar for at least five years. On the other hand, in the last several years there have been appointments made in Ontario, including some very successful ones, of individuals recently called to the bar. However, if the individual is a qualified candidate he or she will hardly be less so after waiting the minimum number of years to be appointed. Certainly, a requirement of a minimum number of years at the bar may operate, at least by way of a negative, to indicate that appointees are able to withstand the stresses and strains of practice and those that their appointment to the bench will inevitably bring. Virtually all of the individuals with whom I spoke, including judges, supported the idea that future appointees should be qualified and experienced lawyers.

25. I am aware, however, particularly in the case of provincial court judges of the Family Division, that it may be desirable to have

10. R.S.C. 1970, c. J-1, s. 3, as amended by S.C. 1976-77, c. 25, s.3.

11. Provincial Court Act, R.S.P.E.I. 1974, c. P-24, s. 2, as amended by S.P.E.I. 1975, c. 78, s.3.

12. The Magistrates' Courts Act, R.S.S. 1965, c. 110, s.4.

younger persons dealing with the many complicated and involved and sometimes highly emotional problems that are brought before a Family Court judge. Therefore, on balance, it is recommended that a requirement of five years membership of the bar of any province of Canada would be a suitable minimum qualification before an individual could be considered for appointment as a judge of the Provincial Court.

B. Grounds for Removal of Judges

26. Section 4(1) of the Act, in part, provides as follows:

A judge may be removed from office before attaining retirement age only for misbehaviour or for inability to perform his duties properly and only if, . . .

The Honourable J. C. McRuer indicated in his report that it would be useful to clarify these grounds¹³ which also appeared in the legislation that was in force at the time of his report.¹⁴

27. It will be observed that section 8(1)(b) respecting the function of the Judicial Council is worded slightly differently than section 4(1) because it refers not only to "misbehaviour" and "inability . . . to perform duties" but also to "neglect of duty". Moreover, the grounds for removal suffer somewhat from a lack of clarity: little guidance is provided for either the Judicial Council or the judges themselves.

13. The McRuer Report, footnote 2, supra, Vol. 2, at p. 541. See reference to this passage by Mr. Justice Grant in Inquiry Re Bannon, footnote 1, supra, at p. 56.

14. The Magistrates Act, R.S.O. 1960, c. 226, s. 3(2).

28. The relevant federal legislation and the legislation of British Columbia have more detailed sections dealing with the grounds for removal. The Provincial Court Act of British Columbia, section 17, states as follows:¹⁵

The following matters may be considered in determining whether or not a judge or justice should be removed from office:

- (a) misconduct or misbehaviour in the execution of his office;
- (b) neglect of duty or failure in the execution of his office;
- (c) a physical or mental disability rendering him unable to perform his duties;
- (d) dishonourable personal conduct by him;
- (e) his conviction for a criminal offence;
- (f) such other matters relating to a judge or justice as are considered relevant to the performance of his duties.

29. The federal Judges Act, section 41(2), states, in part, as follows:¹⁶

-
15. S.B.C., 1975, c. 57. The new Saskatchewan legislation also deals with the grounds for removal in somewhat greater detail; see s. 17(5) of The Provincial Court Act, 1978, Bill No. 65, Sask. This legislation is referred to in footnote 8, supra.
16. R.S.C. 1970, c. J-1, as amended by R.S., c. 16 (2nd Supp.) s.10; S.C. 1976-77, c. 25, s. 15(2).

Where, in the opinion of the Council, the judge in respect of whom an inquiry or investigation has been made, has become incapacitated or disabled from the due execution of his office by reason of

- (a) age or infirmity,
- (b) having been guilty of misconduct,
- (c) having failed in the due execution of his office,
or
- (d) having been placed, by his conduct or otherwise, in a position incompatible with the due execution of his office, . . .

30. I would recommend the adoption of the grounds for removal contained in the federal legislation. The British Columbia provisions, particularly section 17(f), are more open-ended than is perhaps advisable. On the other hand, the grounds for removal in the federal legislation are more specific than the Ontario Act and at the same time section 41(2)(d) provides a general ground without, I believe, being so open-ended as the British Columbia legislation. There is, of course, also the virtue of uniformity in establishing the same grounds for removal of judges appointed by the provinces as judges appointed federally.

31. There should be one brief comment made about section 41(2)(a) of the Judges Act. It refers to "age or infirmity". "Age" as a ground for removal would now seem irrelevant. There is now a mandatory retirement age so that the fear that a judge advanced in years will simply refuse to retire is no longer present. On the other hand, if a judge

becomes unfit for office, his age is also irrelevant. For these reasons it appears that "age" ought to be deleted from section 41(2)(a) if adopted in Ontario.

32. If it is decided to amend section 4(1) of the Act as recommended, then similar amendments should be made to section 11 of The Small Claims Courts Act¹⁷ and section 98 of The Judicature Act.¹⁸ These sections contain grounds for removal of judges of the Small Claims Courts and for masters of the Supreme Court, respectively, in the same language as is found in the present section 4(2) of The Provincial Courts Act.

33. If section 4(1) is to be amended it would appear that the grounds mentioned in section 8 should be similarly amended. It seems to me that there should be uniformity between the grounds which may result in an investigation and those which ultimately, if established, might lead to removal.

C. Issues Related to the Functions of the Judicial Council

34. Before dealing specifically with the issues under this heading, something should be said of the underlying philosophy that

17. R.S.O. 1970, c. 439, s. 11, as amended by The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52, s. 2.

18. R.S.O. 1970, c. 228, s. 98, as amended by The Judicature Amendment Act, 1975, S.O. 1975, c. 30, s.4.

has guided me in dealing with this matter. As has been said earlier in this report, it is obvious that one of the major functions of the Council is that it shields judges from ill-founded or irresponsible charges made against them. It is readily conceded that a dissatisfied individual ought to have a forum in which his or her alleged grievance against a judge can be heard. Nevertheless, when these alleged grievances are without foundation, or are misdirected and misinformed, I think it will also be agreed that the Judicial Council is discharging its responsibilities when it deals with the grievance but at the same time protects the reputation of the individual judge. The difficulty arises, of course, in maintaining confidence that a correct balance is always preserved between those two objectives: that in protecting a judge, an allegation with substance does not fail to be fully and completely considered, or, conversely, that in attempting to maintain the highest of standards an unattainable level of conduct is not required of the judges.

35. I believe, on the whole, there is a high level of public confidence in the Judicial Council as it is composed at present and as it discharges its responsibilities under the Act. What questions have arisen have had their source, it appears, in a lack of understanding of the function of the Judicial Council and a feeling that to some extent the public is completely excluded from all its deliberations. As will be discussed below, I believe there may be a means available

in the present Act to ensure that the interests of the public in the work of the Judicial Council are represented.

36. I have taken some time to set out these remarks because, as will be apparent shortly, I have not chosen to follow many of the suggestions for altering The Provincial Courts Act. I recognize that many similar suggestions have been adopted in other jurisdictions. However, for reasons which will be developed, I do not think they need be adopted in this jurisdiction. I do not argue that they are wrong; I do question whether they are preferable.

1. The Composition of the Judicial Council

37. Section 7 of The Provincial Courts Act, referred to earlier,¹⁹ stipulates the composition of the Judicial Council. Subsection (1)(a) of section 7 states that the Chief Justice of Ontario shall be its chairman.

38. If one peruses the relevant legislation of the other provinces one notes that there is quite a wide variation in the composition of the Judicial Councils. For example, in British Columbia, the Chief Judge of the Provincial Court is the Chairman of the Judicial Council and the chairman of the British Columbia section of the Canadian Bar Association or a person nominated by him is a member of it.²⁰ In Manitoba, a judge of the Court of Queen's Bench is the Chairman of the Council and its

19. Supra, at p.5.

20. Provincial Court Act, S.B.C. 1975, c. 57, s. 12(2).

other members are two members of the Law Society of Manitoba and "two other persons".²¹ In Newfoundland, a judge of a District Court is a member of the Judicial Council.²²

39. After reviewing section 7(1) of the Act, I am generally satisfied with the composition of the Judicial Council. I did consider initially whether it might not be advisable to relieve the Chief Justice of Ontario of his duties on the Council in view of his many other responsibilities. However, despite the burdens imposed by the office of Chief Justice of Ontario, I am satisfied that the administration of justice is best served if the Chief Justice of Ontario, as head of all judges in Ontario, continues as Chairman. I believe that his acting in that capacity enhances the prestige of the Council and emphasizes the importance of the work that it does. The present Chief Justice of Ontario has indicated that he agrees with this conclusion.

40. Because the functions of the Judicial Council now apply to judges of the Small Claims Courts and to masters of the Supreme Court, it has been suggested that either a judge of the Small Claims Courts or the Senior Master or both be made members of the Judicial Council. However, particularly in relation to the Senior Master, his responsibilities should not be increased by requiring his presence on the Council; to the extent that specific issues and questions arise with

21. The Provincial Judges Act, S.M. 1972, c. 61, Cap. C230, s. 6(1).

22. The Provincial Court Act, 1974, S. Nfld. 1974, c. 77, s. 22.

respect to Masters, the Chief Justice of Ontario and the Chief Justice of the High Court would be able to deal with them.

41. However, I do wish to say something about section 7(1)(f). As has been said earlier, that subsection permits the Lieutenant Governor in Council to appoint "not more than two other persons". Despite the fact that this section has been in the legislation from the beginning there has been only one appointment made under it for a relatively short period. In my opinion the failure to utilize this subsection has been very unfortunate. The presence of intelligent and capable individuals on the Council from other disciplines could do much to maintain and, indeed, augment public confidence in the Council. The work of the Council must, of necessity, be done privately and when any activity is carried on in private there naturally arise in the minds of the public suspicions as to the motives behind such secrecy: is the public interest being protected? In difficult situations will interests other than those of the legal profession and of judges be sacrificed? I am convinced these fears are unfounded and that the very fact that the proceedings are private increases the efforts of the Judicial Council to weigh carefully and fully all competing interests. Nevertheless, I also believe that many of these doubts would be lessened if the public could conclude that someone who does not have a direct interest in the functioning of the legal profession was part of the deliberations of the Judicial Council.

42. - I realize in saying this that there will be some who will suggest that the independence of the judiciary would be jeopardized by such appointments. However, if the right sort of person is appointed, I believe he or she will readily grasp the importance of judicial independence and that his or her appointment is not meant in any way to derogate from it. Indeed, the principle will be made more secure. The public is much more likely to be willing to have judges see to their own affairs, advise on appointments to the bench, and investigate charges of misbehaviour against one of their own, if they are assured that a member of the public is present, albeit in a minority capacity, to advise the other members of the Council and to scrutinize the deliberations.

43. For the preceding reasons, therefore, I recommend that the provisions of section 7(1)(f) be utilized in order that prominent and knowledgeable individuals capable of commanding confidence and respect across a broad spectrum of society may be appointed as members of the Council.

2. The Consideration of Proposed Appointments:
section 8(1)(a)

44. My experience has never revealed any difficulty with the methods adopted in advising the Attorney General with respect to proposed appointments nor did any of the individuals with whom I

communicated raise concerns with this aspect of the functions of the Council. It is therefore recommended that no changes be made either in section 8(1)(a) or in the method by which the proposed appointments are considered by the Judicial Council.

3. The Investigation of Complaints and Recommendations Thereon to the Attorney General: section 8

45. Before beginning a detailed discussion of section 8, I wish to say something generally concerning the methods by which allegations against judges are investigated and formal hearings conducted when necessary to determine whether a judge ought to be removed. Once it is decided that the investigation of such allegations should be withdrawn from the control of those who have appointed judges, there are several methods that might be viewed as alternatives. The Judicial Council as one such means appears to be very much an established reality in this jurisdiction. A similar trend appears present throughout Canada and in many of the states of the United States of America.²³ This trend does not appear to have been

23. For a brief but very current overview of this trend see Morrick, "Judicial Misconduct in the U.S.A." (1978), 128 New Law Journal 400 (hereafter cited as Morrick); see also U.S. News & World Report, March 13, 1978, p. 63 et seq. A concise description of the methods employed in the state of New York for the disciplining of judges is provided in Stern, "The State Commission on Judicial Conduct: A New Approach to an Old Problem" (1977), 28 Syracuse Law Review 1. For an article dealing with the process in California see Roche, "Judicial Discipline in California: A Critical Re-evaluation" (1976), 10 Loyola of Los Angeles Law Review 192. See also the very recent publication of the Joint Committee on Professional Discipline of the American Bar Association, Standards Relating to Judicial Discipline and Disability Retirement (Tentative Draft 1977).

followed in England.²⁴

46. However, having once set up a judicial council, the question remains to what degree power should be given to it to act upon allegations of misbehaviour. At the present, an accurate characterization of the powers of the Judicial Council under The Provincial Courts Act is that they are merely investigatory and advisory. It investigates allegations against judges, and disposes of the less serious ones and those that are not well-founded. However, when the allegation is serious and once the Council concludes that the complaint, if proven, would be cause for the removal of the judge, its only function is to recommend that an inquiry be held under section 4(2). At that point, the Judicial Council's responsibilities in the matter end.

(a) Problems of Interpretation of Sections 4 and 8

47. Before progressing further something should be said of certain interpretations of the Act that have been advanced with which I most

24. 8 Halsbury's Laws of England (4th ed.), pp. 680-681; 9 Halsbury's Laws of England (4th ed.), p. 31. For a general discussion of appointment and removal of judges in England see Shetreet, Judges on Trial (London: North-Holland Publishing Company, 1976). By way of illustration, the Courts Act, 1971, c. 23, section 17(4) simply states:

The Lord Chancellor may, if he thinks fit, remove a Circuit judge from office on the ground of incapacity or misbehaviour.

respectfully disagree. It is said that the Judicial Council can, as part of its specific recommendations to the Attorney General under section 8(1)(c), recommend that a judge be removed from office and that an inquiry be held under section 4 in order to accomplish this. A recommendation very similar to this has actually been made on one occasion recently to the Attorney General by the Judicial Council.

48. With the greatest respect, I must disagree. As I will discuss later, such a recommendation is inconsistent with the philosophy and structure of the Act. The function of the Judicial Council is investigative and recommendatory only. If, after reviewing all relevant circumstances, it concludes that the allegation is one that should be dealt with by means of an inquiry under section 4, then it is empowered to so recommend under section 8(3). However, that is all it should recommend with respect to the process leading to the removal of a judge. With the utmost respect, it is not the function of the Judicial Council to conclude that a judge should be removed, and it is certainly not its function to so recommend when at the same time it recommends that there be an inquiry to determine that very question.

49. On another issue with respect to sections 4 and 8, it has also been suggested that section 4(2) of the Act permits the

Lieutenant Governor in Council to avoid any reference of a matter to the Judicial Council and simply permits him to order an inquiry without first receiving the advice of the Judicial Council. I believe sections 4 and 8 read together indicate that the Lieutenant Governor in Council could not do this. It would violate the whole philosophy of the Act if the Lieutenant Governor in Council were suddenly able to circumvent the deliberations of the Council and order an inquiry. Of course, a situation may arise where the allegation is so serious and, on the face of it at least, so well-founded that it would be quite apparent that a public inquiry would have to be held. In that situation the deliberations of the Council would no doubt be undertaken with the utmost dispatch. Nevertheless, I believe the Council should, in the first instance, review any allegation against a judge. It is interesting to note that Mr. Justice Keith, in his report on the first inquiry held under the Act, indicated that no inquiry could be held unless recommended by the Judicial Council.²⁵

50. It will be apparent that I do not agree that the Act can bear either of the interpretations discussed above. Moreover, if by some

25. Inquiry re Provincial Judge Lucien Coe Kurata (1969), at p. 2, wherein he stated: "It is the private inquiry [sic] by the Judicial Council that adds greatly to the protection of Provincial Judges because now no public inquiry can be held unless recommended by the Judicial Council."

means those interpretations could be sustained, I do not agree with them. Therefore, if it is thought necessary, I would recommend that the Act be amended to make clear beyond doubt that: firstly, the Judicial Council, whenever it concludes that an inquiry under section 4(2) ought to be held, should make that recommendation and only that recommendation; and, secondly, that the Lieutenant Governor in Council cannot order an inquiry under section 4(2) without first having received a recommendation of the Judicial Council in respect of the allegation.

(b) The Function of the Judicial Council: Investigation and Inquiry?

51. As will be apparent by now, I believe that the structure for dealing with complaints that exists in the present Act should, in essence, be preserved. I maintain this position despite the fact that it was suggested that the power to hold an inquiry referred to in section 4 of the present Act be vested in the Judicial Council so that it would both investigate complaints and, when warranted, hold an inquiry in order to determine whether a judge ought to be removed. It seems to be very desirable that the two functions, i.e., investigating any allegations of misbehaviour and holding an inquiry in order to determine whether a specific allegation warrants removal, be kept separate.

52. The Judicial Council plays an indispensable role in investigating many kinds of allegations, the nature of which and the reliability of which will vary greatly. It needs to enjoy a great flexibility and freedom in order to handle each complaint, on an individual basis, in the best manner that it judges appropriate. It must be remembered that the majority of complaints are ones about which the public generally knows nothing. Indeed, sometimes the judge never knows that there has been a complaint and an investigation, as, for instance, where the complaint is frivolous.

53. Often, if there is some basis to the allegation but the allegation is itself not, by its nature, a serious one, the Council can dispose of the matter by conducting a preliminary investigation, by then consulting with the judge and receiving his comments and explanation, and by offering its comments and criticisms if any. Most frequently, in these circumstances, there is no report made to the Attorney General; nor in my view ought there to be.

54. On those relatively rare occasions when the allegations are more serious and the preliminary investigation by the Council reveals some merit to the allegations, it may wish to exercise some of its powers under section 8(5) and actually hear, in a more formal way, though privately, viva voce evidence with respect to the allegations. This is simply to aid the Council in its decision as to whether or not

it should recommend that a formal and, usually, public inquiry ought to be held. Nevertheless, the Council is in no sense weighing guilt or innocence but is rather seeking to establish whether the gravity of the matter is such that, having regard to all the circumstances, a formal inquiry ought to take place. On this basis, it proceeds to form a conclusion as to whether or not it should recommend to the Attorney General that an inquiry ought to be held. The Council's functions are investigatory, preliminary, and recommendatory. On the other hand, the proceedings under section 4(2) have as their very purpose to form a judgment, albeit in the form of a recommendation, as to whether, in the particular circumstances, after formal inquiry, specific allegations have been established that are sufficient for the removal of an individual judge. I think it unwise to mix, or even to appear to mix, the functions.

55. I know that what I am saying, to some extent, is against the trend in the relevant legislation throughout much of this country. The federal Judges Act²⁶ and much of the relevant legislation of the provinces²⁷

26. R.S.C. 1970, c.J-1, as amended.

27. See for example: The Provincial Court Act, S.A. 1971, c.86, as amended by The Provincial Court Amendment Act, 1975, S.A. 1975 (2nd Sess.), c. 74; The Provincial Judges Act, S.M. 1972, c. 61, Cap. C230, as amended by S.M. 1977, c.5; Provincial Court Act, S.B.C. 1975, c. 57; The Provincial Court Act, 1974, S. Nfld. 1974, c. 77; The Provincial Court Act, 1978, Bill No. 65, Sask.

It is interesting to note that Alberta originally began in The Provincial Court Act, S.A. 1971, c.86 with a procedure similar to the one under The Provincial Courts Act of Ontario. In The Provincial Court Amendment Act, 1975, S.A. 1975 (2nd Sess.), c. 74, the procedure was amended to give the Judicial Council power to conduct an inquiry and upon completion to recommend the removal of a judge from office.

establish judicial councils that have responsibility for not only investigating allegations of misbehaviour but also for conducting any necessary inquiries for the purpose of concluding whether a judge ought to be removed. The actual details of these other Acts vary considerably. However, they share in common the fact that, unlike our Act, the functions of investigation and inquiry are not separate but are both performed by the Judicial Council when necessary.

56. Simply by way of example, sections 15 and 16 of the Provincial Court Act of British Columbia are set out in order to illustrate how the two responsibilities of investigation and inquiry are to be discharged by the same body:²⁸

15. The chief judge shall

- (a) receive and investigate complaints made in respect of a judge or justice,
- (b) where he considers it appropriate, recommend to the council that it conduct an inquiry, and
- (c) notify the complainant of the results of the investigation.

16. (1) The council shall, on the recommendation of the chief judge under section 15, or at the request of the Lieutenant-Governor in Council, conduct an inquiry as to whether a judge or justice should be removed from office.

(2) Where the chief judge or the associate chief judge participate in an investigation under section 15 they shall not sit as members of the council during an inquiry into the same matter under subsection (1).

28. S.B.C. 1975, c. 57.

(3) The chief judge and the council's members in conducting an investigation or inquiry under this Act have the powers and protection of a commissioner under sections 7, 10, and 11 of the Public Inquiries Act.

(4) An inquiry shall be held in public where so ordered by the Lieutenant-Governor in Council but otherwise it may be held in private or in public as the council considers appropriate.

(5) The council may prohibit the publication of information or documents placed before it that relate to an inquiry or investigation under this Act where it is of the opinion that the publication is not in the public interest.

(6) A judge or justice in respect of whom an inquiry under this section is to be made shall be given reasonable notice of the subject matter of the inquiry and the time and place of a hearing and he shall be afforded an opportunity by himself or his counsel of being heard and of cross-examining witnesses and introducing evidence on his own behalf.

57. As will be apparent, the function of receiving and investigating complaints, the function now dealt with by the Judicial Council in Ontario, is given to the Chief Judge of the Provincial Court of British Columbia, who is by virtue of section 12(2) the Chairman of the Judicial Council. It is the Chief Judge who recommends, pursuant to section 15(b), whether or not an inquiry should be held by the Council.²⁹ If the Chief Judge so recommends then the Council, without the Chief Judge, conducts the inquiry.

29. The other way an inquiry may be held is if the Lieutenant Governor in Council requests an inquiry pursuant to section 16(1). The relevant legislation in Newfoundland also involves the Chief Magistrate, primarily, in the investigatory function. See The Provincial Court Act, 1974, S. Nfld., 1974, c. 77, ss. 19-23.

See also The Provincial Court Amendment Act, 1975, S.A. 1975 (2nd sess.), c. 74, s. 5.

58. I think it might be inadvisable in Ontario for a Chief Judge of the Provincial Court to conduct an investigation exclusively. He is the head of the judges in his Division of the Provincial Court. I should think that a judge who is having difficulties or problems and would like advice and assistance is much less likely to approach a chief judge if it is he who is charged with investigating complaints. I think the task of a chief judge in administering his division of the Provincial Court is made much more difficult if the other judges fear that questions from the Chief Judge and queries about the judges' work may be the initiation of an investigation. Certainly, the judges with whom I spoke indicated they would like to be free to communicate with their Chief Judge when they are having difficulties; indeed, section 8(2) of our Act permits the Chairman of the Council to transmit such complaints as he considers appropriate to the Chief Judges of the two Divisions. Of course, this problem might be, to some extent, alleviated by having some other member of the Judicial Council conduct the investigation. If that were done, however, the problem still would remain that one individual of the Council must decide that a formal inquiry should be held and, after that decision is made, other members of the same Council would have to conduct the hearing.

59. As I have already said, it is highly desirable that the investigatory function and the inquiry function be completely divorced. Moreover, it is advisable that the entire Judicial Council

be involved in the investigative function to varying degrees depending upon the kind of complaint and its potential seriousness. The entire abilities of the Judicial Council should be brought to bear on the whole range of problems and issues concerning the conduct of judges and the administration of justice. For that reason, I have never been in favour of the Council sitting in Committees. I think the only qualification of my opinion that all members should take part in an investigation is the situation where a member of the Council, for whatever reason, decides that it is inappropriate for him to take part in a particular investigation. There is no difficulty in that situation because section 7(3) of the present Act provides that a majority of members of the Judicial Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Council.

60. On the other hand, when an allegation is determined to be serious and must be dealt with in a formal and dispositive manner, i.e., by an inquiry, it seems right that a further and separate procedure specifically designed for that purpose ought to be invoked and should involve a different tribunal.

61. What are the arguments advanced against the separation of the functions of investigation and inquiry that exists at present in The Provincial Courts Act of Ontario? Firstly, it is alleged that the

separation of the two functions tends to make the proceedings more lengthy and costly. For example, it is said that the Judicial Council in its investigation often invokes its power under section 8(5), obtains counsel, hears viva voce evidence, and receives submissions from the judge's counsel, before deciding whether or not to recommend that an inquiry be held. However, it must be remembered that this will happen only occasionally since the Council is unlikely to go this far unless the complaint is serious and there appears to be some basis for it. Moreover, in those Acts where the Council performs both functions, provision is also made for hearing of evidence by the individual conducting the investigation instead of the whole Council. For example, section 16(3) of the Provincial Court Act³⁰ of British Columbia, referred to earlier, grants the same power under the Public Inquiries Act to the Chief Judge conducting the investigation as to the Council holding any subsequent inquiry that is necessary. Similar provisions may be found in the federal Judges Act.³¹ In any event, with a matter of such gravity, involving the reputation of an individual judge and

30. S.B.C. 1975, c. 57.

31. See R.S.C. 1970, c. J-1, section 40(4) as amended by R.S., c. 16 (2nd Supp.), s. 10; S.C. 1976-77, c. 25, s. 15(2), which states:

The Council or an Inquiry Committee in making an inquiry or investigation under this section shall be deemed to be a superior court and shall have

(a) power to summon before it any person or witness and to require him to give evidence on oath, orally or in writing or on solemn affirmation if he is entitled to affirm in civil matters, and to produce such documents and evidence as it deems requisite to the full investigation of the matter into which it is inquiring; and

(b) the same power to enforce the attendance of any person or witness and to compel him to give evidence as is vested in any superior court of the province in which the inquiry or investigation is being conducted.

the administration of justice, it does not trouble me that the method of proceeding might be somewhat more lengthy or costly when its end is to assist those discharging their responsibilities under the Act in order that all factors may be taken into account and all relevant matters addressed. Moreover, I believe more protection is provided to a judge by having a complaint dealt with by two separate and distinct bodies, in the circumstances when that is necessary.

62. Secondly, it is said that the justice of the Supreme Court conducting the inquiry under section 4(2) will be inhibited by the recommendation of the Judicial Council and will approach the matter as if the individual judge is "guilty". To this charge there are several answers. Firstly, it totally and fundamentally misconceives the purpose of the Judicial Council's recommending an inquiry under section 4(2). Such a recommendation by the Judicial Council is an indication only that the matter is sufficiently serious that a formal inquiry should be held. It is not a conclusion that the judge ought to be removed and certainly is not an indication of "guilt". A recommendation by the Council that an inquiry be held is simply a recognition by it that the allegations raised are such that for the sake of the due administration of justice and the credibility of the judicial system they should be disposed of by a formal, and probably public, hearing. In any event, in legislation of other provinces that contains provision for both functions to be exercised by a judicial council, it is necessary that some members advise the

other members that an inquiry should be held. I give very little weight to the suggestion that individuals holding an inquiry would be unduly influenced by the mere fact that a recommendation had been made that such an inquiry be held. To the extent that there is anything to this argument it appears to apply with equal force to a situation where some members of a judicial council recommend to other members that such an inquiry be held. Indeed, the logical implication of this dubious argument might be that one part of the council will not wish to contradict another part of the council and therefore will ultimately recommend the judge's removal.

63. In supporting a complete separation of the functions and therefore supporting the basic structure of the present Act, I trust that there will not be misunderstanding of what I have said. I do not say that those Acts which charge the judicial councils with both functions are wrong and will not dispose of matters in a just fashion. In the vast majority of cases, I think there would be no difference. However, in the difficult cases, I have concluded that, on balance, it is better not only to keep the functions distinct but also to have them clearly appear to be distinct.

(c) Issues Related to Investigations by the Judicial Council Under Section 8

64. Having indicated that the function of the Judicial Council should remain only investigative, there are certain issues related

to its investigative functions with which it will now be appropriate to deal.

(i) Public Access to Proceedings before the Judicial Council

65. Section 8(4) states, in part: "The proceedings of the Judicial Council shall not be public." Because I have recommended that the Judicial Council's functions remain investigative only, I am quite firm in recommending that its proceedings should not be public. To me anything else would be unthinkable for the result might well be to destroy the reputation and utility of a judge whose conduct is found to be without fault and thus to harm the administration of justice.

66. Because I have also recommended that individuals of prominence, other than lawyers and judges, should be appointed to the Judicial Council, I am satisfied that any appearance of attempting to prevent public scrutiny of the proceedings of the Judicial Council will be removed. Because the standards to which judges are held are so high, almost any allegation against a judge must be investigated and addressed. Therefore, as has been said, there are many complaints of which it would be inappropriate for even the judge to be aware. Even when the allegations are more serious and there appears to be some basis for them, I am confident that it is still more appropriate that the Judicial Council be able to carry out its investigations free from the glare of publicity, or at least there should be nothing in the Act to oblige the Council to permit public access.

67. I would go further. I would also empower the Council to prohibit anyone from disclosing any information with respect to proceedings before it. This would, of course, be designed, inter alia, to prevent witnesses or other individuals who have appeared before the Judicial Council from disclosing information. Indeed, it may be that there should be a penalty such as liability for prosecution and a fine, if there is such disclosure. Such a provision would be chiefly in terrorem but would provide a sanction where there has been a blatant disregard of the Council's prohibition.

68. The Judges Act³² and the British Columbia Provincial Court Act³³ contain virtually identical sections which address the problem.

Section 40(5) of the Judges Act states as follows:

The Council may prohibit the publication of any information or documents placed before it in connection with, or arising out of, an inquiry or investigation under this section when it is of opinion that such publication is not in the public interest.

69. It appears to me that it would be useful to add this subsection to section 8 of The Provincial Courts Act. In addition, the words "or disclosure of" might be added after the words "the publication of" to make clear that divulgence by any means may be prohibited.

32. R.S.C. 1970, c.J-1, s. 40, as amended by R.S., c.16 (2nd Supp.), s. 10; S.C. 1976-77, c. 25, s. 15(2).

33. S.B.C. 1975, c. 57, s. 16(5).

70.— Before leaving this part, it is to be noted that in my conversations with members of the Canadian Daily Newspaper Publishers Association, there appeared to be agreement that proceedings before the Judicial Council should be private and should not be publicized by the press. This agreement to some extent rested on the assumption that individuals other than lawyers and judges would be appointed under section 7(1)(f) of the Act and that, in circumstances where an inquiry was held, it would, generally, be held in public.

71. In summary, I recommend that a section in the Act stipulating that the proceedings of the Judicial Council shall not be public should be retained. Moreover, there should be a section permitting the Council, in situations where it deems necessary, to prohibit the publication or disclosure of any information or document relating to its proceedings, and there should be liability for prosecution if such a prohibition is breached.

(ii) Reports of the Judicial Council of the
Disposition of Matters before it

72. Section 8(4) of The Provincial Courts Act states as follows:

The proceedings of the Judicial Council shall not be public, but it may inform and advise the Minister respecting matters that it has investigated or reviewed.

In ~~light~~ of the restrictions that I recommend be put on the publication of any information with respect to proceedings of the Judicial Council, it is appropriate that something be said with respect to the Judicial Council reporting on the disposition of matters before it.

73. Firstly, in every case where the Judicial Council has investigated a complaint the complainant should be informed of the disposition of the matter. Similarly, if the judge is already aware of the investigation, he too should be informed of the Council's disposition and be provided with a copy of the reasons, if any, therefor. The appropriate section should so provide.

74. Secondly, it is obviously both necessary and desirable that the Judicial Council be able to advise the Attorney General of its disposition of a complaint, though, as has been said, in many instances because of the nature of the complaint and the disposition of it, no report will be required or will be desirable. Therefore, the section in the present Act, section 8(4) should continue to be permissive only. If the Council does report to the Attorney General, the judge ought to be provided with a copy and the legislation should so provide.

75. Thirdly, it should be made clear, by legislation, that the Attorney General may make public the reports that he receives

from the Judicial Council, or portions thereof, but only if, in his opinion, it is in the public interest to do so. The purpose of the section would be to ensure that despite the restrictions that the Judicial Council might put upon disclosure, the Attorney General would not be barred from releasing the report of the Judicial Council or portions thereof. For example, if the Judicial Council in a report did recommend an inquiry, it is likely that this would have to be disclosed to the public. However, in this circumstance it may be that not all of the report should be disclosed in order to ensure that the justice conducting the inquiry should be completely free to come to his own conclusions.

76. Of course, there may also be intermediate stages where the Council reports but does not recommend an inquiry. However, if there have been sufficient reports of the circumstances giving rise to the allegations and there is general knowledge that there have been proceedings before the Judicial Council, it may be that the judge himself would wish the report released to the public since it may exonerate him. In addition, the distribution of the report may do much to explain why the complaint was made initially and why it was without foundation, or at least why, in view of the circumstances, it may be reasonably explained. In that situation the Attorney General may decide that it is in the public interest to release the entire report and it should be clear that he is entitled to do so.

(iii) The Public Inquiries Act, section 8(5)

77. Section 8(5) of The Provincial Courts Act states:

The Judicial Council has all the powers that may be conferred upon a commissioner under The Public Inquiries Act.

In 1971 there was enacted The Public Inquiries Act, 1971³⁴ superseding The Public Inquiries Act mentioned in section 8(5). However, it is submitted that it is not appropriate for Part I of The Public Inquiries Act, 1971 to be applicable to investigations under that section. Part I, section 4, deals with the circumstances in which a hearing should be public. Since it has already been recommended that the deliberations of the Judicial Council should not be public, section 4 is clearly not appropriate. Similarly, section 6 dealing with a stated case should not apply.³⁵ However, Part II, dealing with the power to summon witnesses, may be useful.

78. Accordingly, it is recommended that a section like that in section 11(5) of The Small Claims Courts Act³⁶ and section 98(3)

34. S.O. 1971, Vol. 2, c. 49.

35. It is of interest that The Public Inquiries Act, R.S.O. 1970, c. 379, section 5, which formerly applied under section 8(5) of the Act, also provided for a stated case.

36. R.S.O. 1970, c. 439, as amended by The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52.

of The Judicature Act³⁷ be enacted. That section might be worded approximately as follows:

The Judicial Council has all the powers of a Commission under Part II of The Public Inquiries Act, 1971.

79. The role of The Public Inquiries Act, 1971 with respect to an inquiry held under section 4 of The Provincial Courts Act is discussed below.³⁸

(iv) The Rights of a Judge during an Investigation

80. Section 4(1)(b) of the Act makes clear that a judge is to be accorded certain rights during an inquiry under section 4(2) of the Act. However, the judge, during an investigation by the Judicial Council, is not given any specific rights. Certainly, as a matter of practice, the judge has always been accorded the right to counsel at any stage of the investigation. Moreover, in those situations when the Council did hear viva voce evidence the judge was always permitted full rights of cross-examination and the right to call his own witnesses.

37. R.S.O. 1970, c. 228, as amended by The Judicature Amendment Act, 1975, S.O. 1975, c.30. The relevant portions of both section 11(5) of The Small Claims Courts Act and section 98(3) of The Judicature Act are virtually identical. Section 98(3) of The Judicature Act, in part, states as follows:

. . . and a judge so appointed has, for that purpose, the powers of a commission under Part II of The Public Inquiries Act, 1971 which Part applies to such inquiry as if it were an inquiry under that Act.

38. See infra at p. 58.

81. From what I have said herein, I am reluctant to recommend anything that may encumber the investigation or in any way lessen the powers of the Judicial Council to be completely flexible and to determine its method of proceeding in each instance. For that reason I have never favoured enacting specific rules of procedure applicable to such investigations. Similarly, I would not wish by the addition of any section relating to counsel, cross-examination and witnesses, to indicate that every time a judge is asked to answer a query from the Judicial Council he must immediately seek legal advice, and begin to prepare a "case". On the other hand, I can readily understand that judges may wish to be clear about their rights in these circumstances, providing there is any need, in a particular instance, to notify them that the Judicial Council is investigating a complaint. Therefore, if such a section is thought necessary, the following language may be appropriate:

During an investigation, if the judge is notified of the investigation, he shall have the right to be heard by himself or his counsel, to cross-examine witnesses, if any, and to produce evidence on his own behalf.

(v) Resignation of the Judge: section 6

82. Section 6 of the present Act provides as follows:

A judge may at any time resign his office in writing, signed by him and delivered to the Minister.

On the face of it the section indicates that a judge could resign his office at any time. Such a resignation might have the effect of ending an investigation or inquiry since it appears that either can only be proceeded with if the judge is actually still in office. There may be situations, however rare, where it would be in the public interest to continue with the investigation or inquiry in order to ascertain the relevant facts with respect to an allegation, particularly one involving more than simply the conduct of the particular judge.³⁹ Therefore, there ought to be some means of ensuring that an investigation or inquiry can continue when it is in the public interest that it should do so. To achieve this, it is suggested that section 6 be amended to state that the resignation only takes effect upon the acceptance thereof by the Attorney General. The effect of this would be that, in the unusual circumstances referred to, the Attorney General could ensure the continuance of the investigation or inquiry by refusing to accept the resignation of the judge until the investigation or inquiry was completed. If such a change was made perhaps similar changes ought to be made with respect to judges of the Small Claims Courts and Masters.

(vi) Counsel and Secretary to the Council

83. Until recently, whenever the Council required a lawyer to

39. There is some precedent for such a situation. In Inquiry re Bannon, footnote 1, supra, Magistrate Bannon tendered his resignation just as the hearing was about to begin. No problem arose, however, because Magistrate Bannon expressly consented to the inquiry continuing. His letter of resignation is reproduced at pp. 7-8 of that report.

assist it in its investigations, it sought the assistance of an individual from the Ministry of the Attorney General, usually someone engaged in civil litigation. I know that you have, in passing, indicated to me your concern with this practice. On balance, I think it would be better, again not only for independence but for the appearance of independence, for some individual in private practice to assist the Council whenever it is necessary. In saying this, there is, of course, no reflection on the lawyers from the Ministry of the Attorney General who have been counsel to the Council in the past. They have always performed admirably and with integrity.

84. However, I do not think that the matter of who should be counsel should have to be a matter for statutory enactment but rather for decision by the Judicial Council. As I have said, recently the practice of obtaining the assistance of lawyers from the Ministry of the Attorney General has ceased. Moreover, the members of the Judicial Council have indicated to me that they are in agreement that, when the assistance of counsel is necessary, counsel should be individuals in private practice.

85. A permanent secretary to the Council would also be very useful. He or she could greatly assist the Chairman in the day to day business of the Council, particularly dealing initially with ~~com~~plaints. This is especially true if ~~com~~plaints are of a minor nature or clearly outside the jurisdiction of the Council, for example,

where a disgruntled litigant complains only of the disposition of the case. Formerly, law clerks to the Court of Appeal have assisted the Council. They, too, performed very well but their service was, of course, limited by the brief period during which they served as law clerks and by the pressure of their other duties. Recently, the assistant to the Chief Justice of the High Court, Mr. Boris Krivy, has been serving as Secretary to the Judicial Council. His doing so has given more permanence to the position. However, I do think there should be specific provision for a secretary in the Act.

86. In addition there may be need from time to time for the Council to engage the assistance of certain other individuals, for example, accountants, to aid in its investigations. This will probably not occur frequently but there should be provision in the statute permitting this.

87. Section 7(2) of the Act does provide as follows:

Such officers and employees of the Judicial Council as are considered necessary shall be appointed under The Public Service Act.

However, it may be straining the meaning of that section to have it authorize all the matters that have just been discussed, especially when the services of certain individuals such as counsel, and accountants, are required only on a specific occasion.

88. Section 39(7) of the Judges Act⁴⁰ is broader in its

40. R.S.C. 1970, c.J-1, as amended by R.S., c. 16 (2nd Supp.) s. 10; S.C. 1976-77, c. 25, s. 15(2).

wording and is designed, I think, to permit the Council freedom to engage the services of any individual, on any basis, as it considers necessary. Section 39(7) states as follows:

The Council may engage the services of such persons as it deems necessary for carrying out its objects and duties, and also the services of counsel to aid and assist the Council in the conduct of any inquiry or investigation described in section 31.

89. A section such as this would probably be preferable to the one now in our Act. I should think that the addition of "including a secretary" after the words "objects and duties" might be desirable in order to make clear that there is statutory authority for the creation of such a position.

(vii) Powers of Reprimand and Exoneration

90. It has been suggested that the powers of the Judicial Council are deficient because they do not, on the one hand, make provision for the Judicial Council to reprimand a judge when it is concluded that the circumstances warrant and, on the other hand, do not provide for exoneration when the judge's conduct has been held to be blameless. In your letter to me of November 29, 1977 asking me to undertake this review of the Act you made specific reference to the power to reprimand:

It would appear that the Council does not possess any powers of reprimand and, in result, the options which are open to the Council in dealing with allegations of improper judicial conduct involve taking no action at all or recommending a full-scale enquiry which may lead to removal.

91. I must respectfully say that I am not entirely certain that this is a completely correct interpretation of the Act. Section 8(1)(c) states that the Judicial Council is empowered:

. . . to take such action to investigate complaints as it considers advisable including the review thereof with the judge where appropriate, and to make such recommendations to the Minister with respect thereto as it sees fit. (Emphasis added.)

92. It seems to me that the emphasized words permit the Council a wide discretion as to what sort of report and what kind of recommendations it makes to the Attorney General, in addition to its power to recommend an inquiry under section 4. Certainly, I think the Council could make very clear in its report that it was dissatisfied with the conduct of a judge, even though clearly indicating that the nature of the conduct was not something that necessitated an inquiry or did not, in any event, warrant removal. If, in particular circumstances, there was a reason why the public ought to know of the Council's disposition of the investigation and, particularly, its dissatisfaction with the judge's conduct, this could be achieved by making the Council's report or portions thereof public.

93. Conversely, it is within the Council's power to make clear it has concluded the judge's conduct was entirely blameless, if the circumstances lead to that result. Again, if the situation warrants, the Attorney General can make this known to the public by releasing the report, or excerpts therefrom, to the public.

94. Because it is central to this report that the Council's functions remain recommendatory and are clearly seen to be so, I do not think it should be given express powers of reprimand or exoneration. I do think that the Council's disapproval, or conversely, its conclusion that the judge's conduct is blameless can be conveyed clearly through the language that it uses in its report to the Attorney General.

95. For the reasons stated I would not recommend that express powers be given to the Judicial Council to reprimand a judge.

(viii) Costs

96. I am persuaded that the Judicial Council should be empowered to pay the costs of the judge, including costs of counsel, or a part thereof, that have been incurred because of an investigation of a complaint against the judge. The relevant Manitoba legislation has a provision for the awarding of costs.⁴¹ The standard required of judges is very high. Therefore, it may be necessary for them to participate in an investigation because of conduct that, for an ordinary individual, would never be the subject of serious scrutiny. When the Council concludes, after investigation, that further action with respect to the matter is unnecessary, it should have the discretion especially if it concludes that the complaint was frivolous or groundless, to order the costs incurred by the judge, or a portion thereof,

41. The Provincial Judges Act, S.M. 1972, c. 61, Cap. 230, s. 7(9).

paid out of public funds.

97. Moreover, in a situation where the complaint is not serious but the Council is nevertheless dissatisfied with the conduct of the judge, its ability to refuse to pay the judge's costs would provide a tangible means for the expression of disapproval.

(ix) Report to Judges on the Investigations Conducted by the Council

98. The judges with whom I spoke suggested that it would be useful for the judges if the Judicial Council could from time to time send to them a communication of its activities and, in particular, refer generally to complaints that the Judicial Council has dealt with during the period covered by the communication.

99. I think that there is something to be said for this suggestion. I agree that it is important for the judges to have some concrete indication of the high standards that they must meet. At the same time, I have never favoured formulation of a code of ethics. Its terms would be very difficult to draft and the results would be questionable: if it were too specific it might address some factors but fail to take account of others equally relevant in a particular circumstance; if it were too general it would provide very little guidance

in resolving an actual problem.⁴² Mr. Justice Robins has stated well the importance of each matter being addressed on an individual basis:⁴³

— There are no tests of misbehaviour capable of exact definition. Nor are there standards of judicial conduct which admit of quantitative measurement. Each case must ultimately depend on the nature of the conduct, all the facts surrounding it, its effect on the judge's ability to perform his official duties, and the extent to which it has impaired public confidence in the judge and in the administration of justice. As in so many issues in law and ethics, it becomes a matter of degree, a question of where the line is to be drawn.

100. Not favouring codes, I nevertheless do appreciate the judges' concerns that they have some guidance as to how the Judicial Council views various matters. The Canadian Judicial Council, under the federal Judges Act, has established a practice of reporting on its activities and in particular outlining the complaints with which it has dealt.

101. I would submit that a similar undertaking on the part of the Judicial Council could be helpful. I appreciate that the identity

42. For a description of the history and use of the American Bar Association's Code of Judicial Conduct see Armstrong, "The Code of Judicial Conduct" (1972), 26 Southwestern Law Journal 708; see also Morrick, footnote 23, supra, at p. 400.

43. Commission of Inquiry re: Provincial Judge Harry J. Williams (1978), at pp. 19-20; see, too, Inquiry re: the Honourable L.A. Landreville (1966), at p. 92 et seq. wherein the Honourable I. C. Rand discusses at some length the nature of judicial misconduct.

of the individual complainants and judges should not be revealed. Indeed, in particular instances an individual complaint, because of its nature, might not be reported, or at least not fully reported, because to do so would reveal the identity of the judge, unless, in the circumstances, the identity was already known. As always, it would be a matter of judgment. If this is done, the Attorney General should of course receive a copy.

102. However, I realize what I am saying is really an administrative matter for the Judicial Council. The Judicial Council should not be obligated to do this. Certainly there appears to be no statutory directive, either permissive or mandatory, in the federal Judges Act. On balance, therefore, I simply make these remarks in the belief that the Judicial Council will act upon this suggestion, if it considers it an appropriate one.

D. Issues Related to the Inquiry: section 4

103. As I have already tried to make clear, the functions of the Judicial Council are investigatory, preliminary and recommendatory. However, an inquiry under section 4(2) is very different in nature. Its purpose is to determine whether, in the particular circumstances, after formal inquiry, specific allegations have been established that would warrant the removal of an individual judge. At this point, the due administration of justice and, indeed, the reputation

of the judge require that there be a full and complete inquiry to determine whether or not he or she ought to continue to be a judge. In addition, I believe that when this point is reached, generally, the inquiry ought to be a public one.

1. Conduct of the Inquiry

(a) Number of Justices

104. I note section 4(2) speaks of the Lieutenant Governor in Council appointing "one or more judges of the Supreme Court . . . ". To avoid any problems arising through disagreement I would suggest that it be stipulated that the number always be an uneven number. Section 43(1) of The Judicature Act,⁴⁴ provides that the Court of Appeal shall hear an appeal before an uneven number of justices. Of course this provision is only necessary where more than one justice is appointed. I appreciate that usually only one justice is appointed and I see no reason to deviate from that practice.

(b) Rights of the Judge

105. When an inquiry is ordered by the Lieutenant Governor in Council it is clear that the continuance of the judge in office may be placed in jeopardy. Accordingly, at this point there can be no doubt that he should be accorded full rights in protecting his

44. R.S.O. 1970, c. 228.

reputation and interests before the inquiry. Certainly, therefore, section 4(1)(b) stipulating certain rights that the judge is to be accorded at the inquiry ought to be retained. It states that as a condition of the inquiry:

the judge is given reasonable notice of the time and place for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and cross-examining the witnesses and of producing evidence on his own behalf.

106. In addition, however, the federal legislation and the legislation of several of the provinces, in corresponding sections, contain requirements that the judge be provided with a minimum statement of the specific allegations that he has to meet. For example, the comparable sections indicate that the judge is to be given reasonable notice "of the subject matter of the inquiry";⁴⁵ "of . . . the matter to be investigated";⁴⁶ "in writing stating particulars of the complaint".⁴⁷

45. Judges Act, R.S.C. 1970, c. J-1, s. 40(7), as amended by R.S. c. 16 (2nd Supp), s. 10; S.C. 1976-77, c. 25, s. 15(2); Provincial Court Act, S.B.C. 1975, c. 57, s. 16(6).

46. The Provincial Court Act, S.A. 1971, c. 86, s. 10(5)(a) as amended by The Provincial Court Amendment Act, 1975, S.A. 1975 (2nd sess.), c. 74, s.5.

47. The Provincial Judges Act, S.M. 1972, c. 61, Cap. C230, s.7(5), as amended by The Provincial Judges Amendment Act, S.M. 1977, c. 5, s. 4.

107. Such phraseology should be added to section 4(1)(b). The judge, at this point, is entitled to know, in a formal way, at least the essence of the allegations that he must meet. Of course, if during the inquiry other matters are discovered which could constitute sufficient grounds for his removal, the inquiry ought not to be prevented from exploring these simply because of the statement provided concerning the original allegations. Presumably, the inquiry would simply adjourn, if necessary, in order for the judge to prepare to meet these new grounds. Certainly in the past the Order in Council appointing the justice to make an inquiry has stated that his jurisdiction was generally to inquire into the judge's ability or inability to perform his duties. Nevertheless, before the commencement of the inquiry, the judge should be informed, at least at that point, of the essence of the complaint against him.

(c) The Public Inquiries Act

108. Section 4(2) of The Provincial Courts Act states as follows:

For the purpose of making an inquiry under subsection 1, the Lieutenant Governor in Council may appoint one or more judges of the Supreme Court who shall make the inquiry and report thereon, and a judge so appointed has all the powers that may be conferred upon a commissioner under The Public Inquiries Act.

109. As has been discussed, The Public Inquiries Act, 1971⁴⁸

48. S.O. 1971, Vol. 2, c. 49.

is now the relevant legislation. However, unlike its application to proceedings before the Judicial Council, it is appropriate, with respect to an inquiry, that Part I of the Act apply. In particular, section 4 dealing with public access to the inquiry ought to be applicable. Section 4 states as follows:

All hearings on an inquiry are open to the public except where the commission conducting the inquiry is of the opinion that,

- (a) matters involving public security may be disclosed at the hearing; or
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the commission may hold the hearing concerning any such matters in camera.

110. The recommendation that is sought to be made is this. Generally, the assumption at this point is that the inquiry will be held in public. However, there may be circumstances that will dictate that some, or even all, of it should not be public. It appears that section 4 permits precisely that decision to be made. Moreover, I should think that the justice holding the inquiry is the one who ought to make the decision after he is apprised by all counsel of the relevant circumstances.

111. There are, of course, alternatives. Section 10(4)

of the Alberta legislation stipulates that an inquiry should be in private and the results thereof should not be made public.⁴⁹ On the other hand, the federal and British Columbia legislation contain similar provisions that stipulate that the inquiry may be held in public or private but that the Minister (federal) or the Lieutenant Governor in Council (British Columbia) may order the inquiry to be held in public.⁵⁰ I recognize these as alternatives but, on balance, it is recommended that section 4 of The Public Inquiries Act, 1971 be operative and that the justice conducting

49. See The Provincial Court Act, S.A. 1971, c. 86, s. 10(4) as amended by The Provincial Court Amendment Act, 1975, S.A. 1975 (2nd sess.), c. 74, s. 5 which states as follows:

An inquiry held under this section shall be held in private and the results of the inquiry shall not be made public.

50. Provincial Court Act, S.B.C. 1975, c.57, s. 16(4) which states as follows:

An inquiry shall be held in public where so ordered by the Lieutenant Governor in Council but otherwise it may be held in private or in public as the council considers appropriate.

Judges Act, R.S. c.J.-1, s. 40(6) as amended by R.S., c. 16 (2nd supp.), s. 10; S.C. 1976-77, c. 25, s. 15(2) which states as follows:

An inquiry or investigation under this section may be held in public or in private, unless the Minister of Justice of Canada requires that it be held in public.

the inquiry be responsible for deciding whether the inquiry, or parts thereof, should not be public.

112. With respect to the question of whether the inquiry should be public or private one matter remains. If it is decided that the inquiry, or parts thereof, are to be private, it appears to follow that the justice ought to be empowered to prohibit publication of disclosure of any information or documents placed before the inquiry. The actual details of such a provision have already been discussed in the context of investigations by the Judicial Council.⁵¹ Such a provision should be available for use in the infrequent circumstances in which it may be necessary.

113. The presence of section 4 in Part I of The Public Inquiries Act, 1971 is not the only reason why that Part ought to be applicable to the inquiry. Part I also contains section 6 dealing with the provisions for stating a case to the Divisional

51. See supra, at p. 40.

Court.⁵² It is, I believe, consistent with what I have said with respect to the nature of an inquiry and the rights of a judge before it that the judge ought to be able to question the conduct of an inquiry by means of a stated case.

114. Part I also contains section 5 which provides, firstly, a means whereby persons with sufficient interest may participate in the inquiry (subsection 1) and, secondly, a means of protecting persons from a finding of misconduct on their part unless they have

52. Section 6 states as follows:

(1) Where the authority to appoint a commission under this Act or the authority of a commission to do any act or thing proposed to be done or done by the commission in the course of its inquiry is called into question by a person affected, the commission may of its own motion or upon the request of such person state a case in writing to the Divisional Court setting forth the material facts and the grounds upon which the authority to appoint the commission or the authority of the commission to do the act or thing are questioned.

(2) If the commission refuses to state a case under subsection 1, the person requesting it may apply to the Divisional Court for an order directing the commission to state such a case.

(3) Where a case is stated under this section, the Divisional Court shall hear and determine in a summary manner the question raised.

(4) Pending the decision of the Divisional Court on a case under this section, no further proceedings shall be taken by the commission with respect to the subject matter of the stated case but it may continue its inquiry into matters not in issue in the stated case.

For a recent case dealing with this section see Re Bortolotti and Ministry of Housing et al (1977), 15 O.R. (2d) 617, 76 D.L.R. (3d) 408 (C.A.).

been afforded certain protections (subsection 2).⁵³ Since the inquiry may very well involve scrutinizing the behaviour of other persons and other persons may very well have a "substantial and direct interest in the subject matter of the inquiry", I believe section 5 should also be applicable.

115. Having concluded that both Parts I and II ought to be applicable to an inquiry, I refer again⁵⁴ to section 11(5) of The Small Claims Courts Act⁵⁵ and section 98(3) of The Judicature Act.⁵⁶

53. Section 5 provides as follows:

(1) A commission shall accord to any person who satisfies it that he has a substantial and direct interest in the subject matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by his counsel on evidence revelant [sic] to his interest.

(2) No finding of misconduct on the part of any person shall be made against him in any report of a commission after an inquiry unless that person had reasonable notice of the substance of the misconduct alleged against him and was allowed full opportunity during the inquiry to be heard in person or by counsel.

For a recent case dealing with section 5(1) see, Re Royal Commission on Conduct of Waste Management et al. (1977) 17 O.R. (2d) 207, (Div. Ct.).

54. See discussion, supra, at p.

55. R.S.O. 1970, c. 439, as amended by The Small Claims Courts Amendment Act, 1977, S.O. 1977, c. 52.

56. R.S.O. 1970, c. 228, as amended by The Judicature Amendment Act, 1975, S.O. 1975, c. 30, s. 4.

116. These sections correspond to section 4(2) of The Provincial Courts Act. However, these sections contain language that indicates that only Part II of The Public Inquiries Act, 1971 ought to be applicable. For example, section 98(3) of The Judicature Act states, in part, as follows:

. . .and a judge so appointed has, for that purpose, the powers of a commission under Part II of The Public Inquiries Act, 1971 which Part applies to such inquiry as if it were an inquiry under that Act.

If the recommendation in this part is adopted, it will be necessary to amend section 4(2) of The Provincial Courts Act to make clear that both Parts I and II of The Public Inquiries Act, 1971 should be applicable to inquiries conducted under section 4 of The Provincial Courts Act. It appears that section 11(5) of The Small Claims Courts Act and section 98(3) of The Judicature Act will also have to be amended to make the corresponding sections in those Acts conform with the amendments in The Provincial Courts Act.

2. Suspension of a Judge Pending an Inquiry

117. The relevant legislation of several of the provinces contain provision for the suspension of a judge during or pending the result of an inquiry or even during an investigation.⁵⁷ It has been suggested

57. For example, Provincial Court Act S.B.C. 1975, c. 57, s. 18(1); The Provincial Judges Act, S.M. 1972, c.61, Cap. C230, s. 7(4.1) as amended by The Provincial Judges Amendment Act, S.M. 1977, c.5, s. 3; Provincial Court Act R.S.P.E.I. 1974, c. P-24, s.10(1).

that such a provision should be included for the purpose of an inquiry or, even, that the Judicial Council should have a power to suspend pending the disposition of an investigation.

118. It is recognized that there may be situations where it is not desirable that the judge sit while the complaint is being disposed of. However, it will be recalled that section 10(3) of The Provincial Courts Act of Ontario provides that the Chief Judge of each division is responsible for assigning judges for hearings in his courts. In the past whenever it was concluded that it was undesirable to have a judge sit pending the disposition of a complaint the Chief Judge simply did not assign him to any cases. This is a more informal method of avoiding the difficulty and a preferable one. Suspension of a judge before disposition of the matter may carry with it an unfortunate connotation. Simply not assigning him to hear any cases would seem to be a better means of achieving the same objective. Moreover the right of suspension by the Council would dilute the independence of a judge even though such right is given by statute.

119. 3. Powers of the Inquiry

If, at the conclusion of the inquiry, the justice conducting the inquiry concludes that the judge's conduct has fallen below an acceptable level should there be alternatives available other than simply recommending removal from office? Should there be, for example,

a power to reprimand formally or to suspend a judge for a certain period of time? The relevant legislation of Manitoba and Prince Edward Island provides such options. The Provincial Judges Act⁵⁸ of Manitoba, section 7(9), states as follows:

Disposition of complaint.

The Judicial Council after holding an inquiry may

- (a) dismiss the complaint; or
- (b) suspend the judge; or
- (c) reprimand the judge;

.

The Provincial Court Act⁵⁹ of Prince Edward Island, section 10(6), states as follows:

Where the report of the judge of the Supreme Court confirms that the judge is guilty of misbehaviour or is unable to perform his duties properly, the judge of the Supreme Court shall report to the Lieutenant Governor in Council and shall make one or more of the following recommendations:

- (a) dismiss the complaint;
- (b) reprimand the judge;
- (c) recommend that the judge be suspended for a determinate period;
- (d) recommend that the judge be dismissed from office; or
- (e) withdraw the suspension and reinstate the judge.

120. I recognize the provisions contained in these sections as very real alternatives to be granted to an inquiry when it concludes that the judge's conduct has fallen short of the required standard

58. S.M. 1972, c. 61, Cap. C230.

59. R.S.P.E.I. 1974, c. P-24.

and yet is not so deficient as to warrant removal. A strong case could be made for providing an inquiry with such options. As I mentioned earlier, you, sir, have also raised the possibility of such alternatives, albeit in the context of the functions of the Judicial Council.⁶⁰ Nevertheless, the reality may be, of course, that once a judge has been officially reprimanded or suspended his usefulness as a judge is seriously imperilled and therefore the inquiry should have only the alternative of recommending either that he should or should not be removed. On the other hand, some criticism of the judge's conduct can always be expressed, in varying degrees depending on his shortcomings, in the report of the inquiry without the justice recommending the judge's removal and without the legislation providing for suspension or reprimand.

121. On balance, I do not recommend the inclusion of such a section. However, I have drawn attention to some existing precedents in case it is concluded that such provisions ought to be included.

4. Right of Appeal

122. Should there exist a right of appeal by a judge from a recommendation made by an inquiry that he be removed? Suppose, for instance, and only by way of illustration, that the justice hearing the inquiry refused to permit a full cross-examination of a certain

60. Supra, at p.

witness or reached a conclusion on insufficient evidence, or no evidence at all. Should the judge be able to have recourse to the Court of Appeal? On the face of it at least, an argument might be made that the matter of an inquiry may have such drastic consequences for a judge that he ought to be able to have recourse to the Court of Appeal in the appropriate circumstances.

123. Statutory precedent does exist for such rights of appeal. The legislation of both British Columbia⁶¹ and Manitoba⁶² provides that a judge may appeal a decision affecting him. For example, section 20 of the Provincial Court Act of British Columbia states as follows:⁶³

A judge or justice recommended for removal from office may, within 30 days after the date of mailing to him or personal service upon him of the notification of the recommendation, appeal the recommendation to the Court of Appeal on any issue of fact or law in the same manner as an appeal to that court from the Supreme Court and the decision of the Court of Appeal on an appeal under this section is final.

124. Moreover, if Part I of The Public Inquiries Act, 1971, is, as has been recommended, made to apply to the inquiry, the conduct of the inquiry, while it is ongoing, may be supervised by the Divisional

61. Provincial Court Act, S.B.C. 1975, c. 57, s. 20.

62. The Provincial Judges Act, S.M. 1972, c.61, Cap. C230, s. 7(11).

63. -The reference to "justice" in the section refers to a justice of the peace to whom certain provisions of the Act are made to apply.

Court. It might be argued to be consistent with this that, if at the end of the inquiry, some error is made or a conclusion wrongly arrived at, then there ought to be a means of correcting the error.

125. I acknowledge all that has been said. Nevertheless, upon analysis of the true nature of the inquiry, it is my submission that no appeal should be given. After all, the justice holding the inquiry is only empowered to recommend whether or not a judge should be removed. To my mind, it would be inconsistent to allow an appeal from what is only a recommendation. It is the Lieutenant Governor in Council who is empowered to make the decision; there the ultimate decision rests and should rest. If the recommendation of the justice who held the inquiry is not to be followed or is to be interfered with in any way it is not for the Court of Appeal to do so but rather for those who must make the final decision. I therefore do not recommend that an appeal be provided for in the Act.

5. Costs

126. For reasons similar to those stated above in the context of an investigation by the Judicial Council,⁶⁴ I believe that, in appropriate circumstances, an inquiry ought to be able to order that a judge be compensated for the costs, or a portion thereof, incurred by him during an inquiry.

64. See supra, at p. 52.

6. Report of the Inquiry

127. Section 4(3) of The Provincial Courts Act states as follows:

An order removing a judge from office under this section may be made by the Lieutenant Governor in Council and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next ensuing session.

128. There should also be provisions making clear that the Attorney General may release the report of the inquiry, or a portion thereof, if, in his opinion, it is in the public interest to do so. This will ensure that the public can have access to the report in the situation where the inquiry does not recommend that the judge be removed, unless there is compelling reason why it should not be made available. There should also be provision that the judge should be provided forthwith with a copy of the decision and the order for his removal if it is made.

E. Other Issues

1. Extra-Judicial Employment of Provincial Court Judges

129. Section 12 of The Provincial Courts Act states:

(1) Subject to subsection 2, unless authorized by the Lieutenant Governor in Council, a judge shall not practise or actively engage in any business, trade or occupation but shall devote his whole time to the performance of his duties as a judge.

(2) A judge, with the previous consent of the Minister, may act as arbitrator, conciliator or member of a police commission.

130. The Honourable J. C. McRuer, in his report,⁶⁵ condemned the extra-judicial employment of Provincial Court judges. In particular he concluded that it was inappropriate for Provincial Court judges to be members of Boards of Commissions of Police or to be labour arbitrators. I appreciate fully that this question is to a large extent a matter of policy but, for my part, I wish to align myself with the conclusions of Mr. McRuer. Provincial Court judges should devote themselves fully to the administration of justice in their courts. It is not desirable that they engage in any other employment. This is particularly so with respect to Provincial Court judges being members of Police Commissions when those same judges may have to deal with police officers in an entirely different capacity in their courts.

2. Submissions of the Provincial Judges Association
(Criminal Division)

131. Representatives of the Provincial Judges Association (Criminal Division) made representations to me, both orally and in writing, that were of great assistance. In addition, however, they also made representations on matters that I considered clearly beyond the scope of my review of The Provincial Courts Act. Many of these

65. The McRuer Report, footnote 2, supra, Vol. 2, at p. 542, et seq.

submissions focused on such matters as administration of the courts, education of judges, security in the courts and budgetary matters. While I do not think it would be appropriate for me to attempt to assess the merits of their submissions, I was impressed by the sincerity with which they were made. I can only suggest that at some convenient time a senior member of your Ministry should meet with representatives of this Association to consider these submissions. Perhaps it would be appropriate to meet also with representatives of the Provincial Judges Association (Family Division) with respect to these matters.

IV Summary of Recommendations

132. The following is a summary of the recommendations found in the report. The only points dealt with are those that it is recommended be the subject of statutory amendment. Therefore, the suggestions that were made but were not recommended to be dealt with by statutory amendment are not listed in this section. Similarly, those matters with respect to which it was recommended that there be no change are also not listed in this section.

Appointment of Judges

1. All judges appointed should be qualified lawyers. It would be preferable that they have some minimum amount of experience. It is suggested that prospective appointees be members of any bar of Canada for five years.

Grounds for Removal

2. The grounds for removal of judges should be the same as for federally appointed judges with the exception of the words "age or" found in subsection 2(a) of section 41 of the Judges Act which should be deleted if that section is adopted in Ontario. Similar changes should be made in respect of judges of the Small Claims Courts and masters of the Supreme Court.

Appointments under section 7(1)(f)

3. Section 7(1)(f) of the present Act should be utilized to appoint prominent and distinguished individuals, other than judges and lawyers, to the Judicial Council.

Investigations by the Judicial Council

4. The present Act should be amended to make clear that the Judicial Council cannot recommend the removal of a judge but can only recommend that an inquiry be held under section 4(1) of the Act, if it decides that such an inquiry is necessary.

5. The present Act should be amended to make clear that the Lieutenant Governor in Council cannot order an inquiry without first having had the Judicial Council deal with the complaint.

6. Section 8(1)(b) should be amended to incorporate the grounds set out in the amended section 4.

7. — The deliberations of the Judicial Council should be private and the Council ought to be empowered to prohibit anyone from disclosing any information with respect to proceedings before it.

8. A complainant should always be informed promptly of the disposition that the Judicial Council has made of a complaint and, if it is appropriate, the judge also should be informed.

9. If the Council reports to the Attorney General the judge should be provided with a copy of the report. The Attorney General ought to be able to make reports of the Judicial Council, or portions thereof, public, if, in his opinion, it is in the public interest to do so.

10. The Public Inquiries Act, 1971, Part II, should apply to proceedings before the Judicial Council.

11. Section 6 of The Provincial Courts Act should be changed to make a judge's resignation effective only after it has been accepted by the Attorney General. Similar changes ought to be made in respect of judges of the Small Claims Courts and masters of the Supreme Court.

12. The Act should be amended to make clear that the Judicial Council may appoint a permanent secretary and may engage the services of individuals, including counsel, to assist it in its investigations.

13. — In appropriate circumstances the Judicial Council should be able to order that a judge be compensated for the costs, or a portion thereof, incurred by him, during an investigation.

The Inquiry

14. Section 4(2) of the Act should be amended to stipulate that if more than one justice is appointed there should always be an uneven number of justices appointed.

15. Prior to the commencement of the inquiry, the judge ought to be provided with a brief statement of the complaint that has been made against him. For this purpose, section 4(1)(b) of the present Act should be amended.

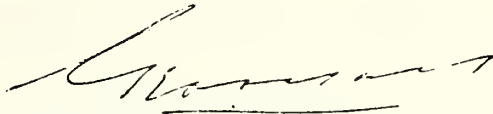
16. The Public Inquiries Act, 1971, Parts I and II, should apply to an inquiry. Should the inquiry not be public the justice holding the inquiry should be empowered to prevent anyone from disclosing any information with respect to the proceedings.

17. In appropriate circumstances, an inquiry ought to be able to order that a judge be compensated for the costs, or a portion thereof, incurred by him during an inquiry.

18. — The Attorney General, in all cases, ought to be able to release the report of the inquiry, or a portion thereof, if, in his

opinion, it is in the public interest to do so. There should also be provision that a judge be provided forthwith with a copy of the decision, and the order for his removal if it is made.

This is my report.

A handwritten signature in dark ink, appearing to read 'G. A. Gale', is written above a horizontal line.

Honourable G. A. Gale

Dated at Toronto, June 28, 1978.

CHAPTER 103

An Act to provide for
Provincial Courts and Judges

*Assented to May 30th, 1968
Session Prorogued July 23rd, 1968*

HER MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Ontario,
enacts as follows:

Interpre-
tation

1. In this Act,

- (a) "judge" means a provincial judge appointed under this Act;
- (b) "Judicial Council" means the Judicial Council for Provincial Judges established under section 7;
- (c) "Minister" means the Minister of Justice and Attorney General. *New.*

PART I

PROVINCIAL JUDGES

2. The Lieutenant Governor in Council on the recom-
mendation of the Minister may appoint such provincial judges
as he considers necessary. R.S.O. 1960, c. 201, s. 4 (1);
1964, c. 57, s. 2, *amended.*

3.—(1) Every judge shall take and subscribe the following Oath
oath before a chief judge or a judge designated by him:

I,
do swear that I will truly and faithfully, according to my skill
and knowledge, execute the several duties, powers and trusts
of the Provincial Courts, so help me God.

and also the oath of allegiance as required by *The Public Officers Act.* R.S.O. 1960, c. 326

(2) The oath of office and oath of allegiance shall be
transmitted forthwith to the Inspector of Legal Offices and
shall be filed in his office. R.S.O. 1960, c. 226, s. 6, *amended.*

**Removal
for cause**

4.—(1) A judge may be removed from office before attaining retirement age only for misbehaviour or for inability to perform his duties properly and only if,

- (a) the circumstances respecting the misbehaviour or inability are first inquired into; and
- (b) the judge is given reasonable notice of the time and place for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and of cross-examining the witnesses and of producing evidence on his own behalf.

Inquiry

(2) For the purpose of making an inquiry under subsection 1, the Lieutenant Governor in Council may appoint one or more judges of the Supreme Court who shall make the inquiry and report thereon, and a judge so appointed has all the powers that may be conferred upon a commissioner under *The Public Inquiries Act*.

R.S.O. 1960,
c. 323

**Order for
removal**

(3) An order removing a judge from office under this section may be made by the Lieutenant Governor in Council and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next ensuing session. R.S.O. 1960, c. 227, s. 3 (2-4), *amended*.

Retirement

5.—(1) Every judge shall retire upon attaining the age of sixty-five years.

Idem

(2) Notwithstanding subsection 1, a judge appointed as a full-time magistrate after the 1st day of July, 1941 and before this Act comes into force shall retire upon attaining the age of seventy years.

Idem

(3) Notwithstanding subsection 1, a judge appointed as a full-time magistrate on or before the 1st day of July, 1941, shall retire upon attaining the age of seventy-five years.

**Re-appoint-
ment**

(4) Upon attaining an age for retirement under subsection 1 or 2, a judge may be re-appointed to hold office during pleasure but shall not hold office after attaining the age of seventy-five years. 1961-62, c. 76, s. 1, *amended*.

Resignation

6. A judge may at any time resign his office in writing, signed by him and delivered to the Minister. *New*.

**Judicial
Council
established**

7.—(1) The Judicial Council for Provincial Judges is established and shall be composed of,

- (a) the Chief Justice of Ontario;

(b)

- (b) the Chief Justice of the High Court;
- (c) the chief judge of the Provincial Courts (Criminal Division);
- (d) the chief judge of the Provincial Courts (Family Division);
- (e) the Treasurer of the Law Society of Upper Canada; and
- (f) not more than two other persons appointed by the Lieutenant Governor in Council.

(2) Such officers and employees of the Judicial Council as ^{Staff} are deemed necessary shall be appointed under *The Public Service Act, 1961-62*, c. 121.

(3) A majority of members of the Judicial Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Judicial Council. *New.*

8.—(1) The functions of the Judicial Council are,

^{Functions}

- (a) at the request of the Minister, to consider the proposed appointment of provincial judges and make a report thereon to the Minister; and
- (b) to receive complaints respecting the misbehaviour of or neglect of duty by judges or the inability of judges to perform their duties, and to hold inquiries in respect thereof.

(2) An inquiry held by the Judicial Council under clause ^b of subsection 1 shall not be public. ^{Inquiries}

(3) The Judicial Council, after holding such an inquiry, ^{Idem} may recommend to the Lieutenant Governor in Council that an inquiry be held under section 4. *New.*

9.—(1) Every judge has jurisdiction throughout Ontario ^{Jurisdiction} and,

- (a) shall exercise all the powers and perform all the duties conferred or imposed upon a provincial judge by or under any Act of the Legislature or of the Parliament of Canada;
- (b) has all the power and authority now vested by or under any Act of the Legislature in a magistrate, two justices of the peace sitting together or a juvenile and family court or a judge thereof;

(c)

(b)

(c) subject to subsection 2, may exercise all the powers and perform all the duties conferred or imposed upon a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada;

(d) is *ex officio* a justice of the peace and commissioner for taking affidavits. R.S.O. 1960, c. 226, s. 2 (2), amended.

Idem

1953-54,
c. 51 (Can.)

(2) A judge shall not exercise the powers or perform the duties conferred or imposed upon a magistrate under Part XVI of the *Criminal Code* (Canada) unless,

(a) he has been a member of the bar of one of the provinces of Canada for at least five years;

(b) he has acted as a provincial judge for a period of five years; or

(c) he was acting as a full-time deputy magistrate, magistrate or judge of the juvenile and family court immediately before this Act comes into force,

and he is so designated by the Lieutenant Governor in Council. *New.*

Chief
Judge

10.—(1) The Lieutenant Governor in Council may appoint a judge as chief judge of the Provincial Courts (Criminal Division) and a judge as chief judge of the Provincial Courts (Family Division).

Alternates

(2) The Minister may designate judges to act in the place of a chief judge for all purposes during his illness or absence.

Duties

(3) Each chief judge shall have general supervision and direction over arranging the sittings of his courts and assigning judges for hearings in his courts, as circumstances require.

Idem

(4) In the arrangement of the courts and the assignment of judges thereto, regard shall be had to,

(a) the desirability of rotating the judges; and

(b) the greater volume of judicial work in certain of the counties and districts. 1960-61, c. 57, s. 4; 1967, c. 43, s. 1, *part.*

Senior
Judges

11. The Minister may designate a judge to be senior judge of such Provincial Courts (Criminal Division) or Provincial Courts (Family Division), or both as are named in the designation. *New.*

12.—(1) Subject to subsection 2, unless authorized by the Lieutenant Governor in Council, a judge shall not practise or actively engage in any business, trade or occupation but shall devote his whole time to the performance of his duties as a judge. ^{Other employment}

(2) A judge, with the previous consent of the Minister, ^{Idem} may act as arbitrator, conciliator or member of a police commission. R.S.O. 1960, c. 226, s. 10, *amended*.

13. *The Public Authorities Protection Act* applies to judges in the same manner and to the same extent as it applies to justices of the peace, without limiting any other defences available to judges under the law in respect of acts done in the execution of their duties. *New.* ^{Application of R.S.O. 1960, c. 318}

PART II

PROVINCIAL COURTS (CRIMINAL DIVISION)

14. There shall be in and for every county and district a court of record to be styled, ^{Provincial Courts (Criminal Division)}

(a) in counties, the "Provincial Court (Criminal Division) of the County (*or* United Counties) of (*naming the county or united counties*)";

(b) in The Regional Municipality of Ottawa-Carleton, the "Provincial Court (Criminal Division) of The Regional Municipality of Ottawa-Carleton".

(c) in districts, the "Provincial Court (Criminal Division) of the District of (*naming the district*)",

presided over by a judge. *New.*

15. A judge shall exercise the powers and perform the duties vested in him as a magistrate, provincial magistrate or one or more justices of the peace under section 9 sitting in a Provincial Court (Criminal Division). *New.* ^{Judges preside}

16. The judges of the Provincial Court (Criminal Division) of each county or district may hold sittings at any place in the county or district designated by the chief judge of the Provincial Courts (Criminal Division). *New.* ^{Sittings}

PART III

PROVINCIAL COURTS (FAMILY DIVISION)

17.—(1) There shall be in and for every county and district a court of record to be styled, ^{Provincial Courts (Family Division)}

(a)

- (a) in counties, the "Provincial Court (Family Division) of the County (or United Counties) of (*naming the county or united counties*)";
- (b) in The Regional Municipality of Ottawa-Carleton, the "Provincial Court (Family Division) of The Regional Municipality of Ottawa-Carleton".
- (c) in districts, the "Provincial Court (Family Division) of the District of (*naming the district*)",

presided over by a judge. *New.*

Jurisdiction

- (2) Each Provincial Court (Family Division),

R.S.C. 1952,
c. 160

- (a) is a juvenile court for the purpose of dealing with juvenile delinquents so soon as the *Juvenile Delinquents Act* (Canada) is proclaimed in force in the county or district for which it was established, and such court has all the powers vested in a juvenile court under that Act;
- (b) has power to try any child charged with an offence against the laws of Ontario; and
- (c) has power to deal with all cases where jurisdiction is conferred by any Act upon a juvenile court or a judge thereof or upon a juvenile and family court or a judge thereof or upon a Provincial Court (Family Division). R.S.O. 1960, c. 201, s. 3, *amended.*

**Judge
presides**

18. A judge shall exercise the powers and perform the duties vested in him as a judge of the juvenile and family court under section 9 sitting in a Provincial Court (Family Division). *New.*

Sittings

19. The judges of the Provincial Court (Family Division) of each county or district may hold sittings at any place in the county or district designated by the chief judge of the Provincial Courts (Family Division). *New.*

**Control of
officers
and staff**

20. The officers and members of the staff of a Provincial Court (Family Division) shall act in accordance with the directions of the presiding judge of the court. R.S.O. 1960, c. 201, s. 15 (2), *amended.*

**Detention
and
observation
home**

21.—(1) A detention and observation home may be established, maintained and operated as a part of a Provincial Court (Family Division).

(2) The superintendent and assistant superintendent of a ^{Status} detention and observation home shall be deemed to be officers of the court of which the home is a part. R.S.O. 1960, c. 201, s. 6 (1, 3).

22. The Minister may declare any place, house, home or ^{Detention homes} institution a detention home within the meaning of the *Juvenile Delinquents Act* (Canada). R.S.O. 1960, c. 201, ^{R.S.C. 1952, c. 160} s. 7 (1).

23.—(1) A diagnostic clinic may be established, main- ^{Diagnostic clinic} tained and operated as part of a Provincial Court (Family Division).

(2) Professional persons appointed for the purposes of a ^{Professional persons status} diagnostic clinic shall be deemed to be officers of the court of which the clinic forms a part. R.S.O. 1960, c. 201, s. 8, *amended*.

24. Every probation officer appointed for a Provincial ^{Powers of probation officers} Court (Family Division) has, while acting in the discharge of his duties, all the powers of a police constable. R.S.O. 1960, c. 201, s. 11 (2), *amended*.

25.—(1) A person entitled to alimony or maintenance ^{Alimony and maintenance orders} under a judgment or order of the Supreme Court or a surrogate court may file a copy of the judgment or order in the Provincial Court (Family Division) having jurisdiction where the person ordered to pay the alimony or maintenance resides, and, when so filed, it shall be enforced in the same manner as an order made in that court under *The Deserted Wives' and Children's Maintenance Act*. ^{R.S.O. 1960, c. 105}

(2) A person entitled to maintenance under a judgment ^{Interpre- tation} or order of the Supreme Court or a surrogate court within the meaning of subsection 1 includes a child entitled to maintenance under the judgment or order. R.S.O. 1960, c. 201, s. 20; 1967, c. 43, s. 2.

26.—(1) The Rules Committee of the Provincial Courts ^{Rules of procedure} (Family Division) is established and shall be composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members as chairman.

(2) A majority of the members of the Rules Committee ^{Quorum} constitutes a quorum.

(3) Subject to the approval of the Lieutenant Governor ^{Rules} in Council, the Rules Committee of the Provincial Courts (Family Division) may make rules regulating any matters relating to the practice and procedure of the courts, including, without limiting the generality of the foregoing,

- (a) regulating the duties of officers of the courts;
- (b) regulating the costs of proceedings in the courts;
- (c) prescribing and regulating the proceedings under any Act that confers jurisdiction upon the courts or a judge sitting therein;
- (d) governing the payment, transfer or deposit into, or in, or out of, any court of any money or property, or to the dealing therewith;
- (e) allowing for service out of Ontario.

Idem

(4) Where provisions in respect of practice or procedure are contained in any Act, rules may be made adding to or modifying such provisions to any extent that is deemed necessary for the equitable despatch of the business of the court unless that power is expressly excluded. *New.*

PART IV

GENERAL

Clerk

27.—(1) There shall be a clerk for each Provincial Court (Criminal Division) and each Provincial Court (Family Division) who shall act under the direction and supervision of the judge. *New.*

Officers and
employees
1961-62,
c. 121

(2) Such officers, clerks and employees as are deemed necessary shall be appointed for Provincial Courts under *The Public Service Act, 1961-62*. R.S.O. 1960, c. 201, s. 16 (1); 1961-62, c. 67, s. 3 (1), *amended*.

Regulations

28.—(1) The Lieutenant Governor in Council may make regulations,

- (a) specifying the returns to be made by judges and chief judges;
- (b) providing for the safe-keeping, inspection and destruction of books, documents and papers of Provincial Courts and judges;
- (c) fixing the remuneration of judges;
- (d) providing for the benefits to which judges are entitled, including,
 - (i) leave of absence and vacations,

(ii)

(ii) sick leave credits and payments in respect of such credits,

(iii) pension benefits for judges and their widows and surviving children,

and for the transfer or other disposition of benefits in respect thereof to which persons appointed as judges under this Act were entitled under *The Public Service Act, 1961-62* ^{R.S.O. 1960, c. 121;} or *The Public Service Superannuation Act* at the time of their appointment under this Act; ^{R.S.O. 1960, c. 332}

(e) providing for the appointment and employment of stenographic reporters to take down evidence before judges, and fixing their fees, expenses and other forms of remuneration;

(f) prescribing the duties of chief judges;

(g) prescribing the functions of and providing for the management of detention and observation homes, detention homes, and diagnostic clinics under this Act;

(h) prescribing the duties of the officers and employees of the staffs of Provincial Courts or of any class of such officers or members;

(i) providing for a system of statistical records relating to Provincial Courts;

(j) respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1960, c. 226, s. 20 (1); R.S.O. 1960, c. 201, s. 21; 1964, c. 57, s. 5; 1967, c. 43, s. 3, *amended*.

(2) Any regulation made under subsection 1 may be general ^{Idem} or particular in its application. R.S.O. 1960, c. 226, s. 20 (2), *amended*.

20. Every action or proceeding pending before a deputy magistrate or magistrate or before a juvenile and family court or a judge thereof on the day this Act comes into force is continued in the Provincial Court for the county or district in which the action or proceeding was taken, and shall proceed, so far as the judge considers practicable, in accordance with this Act. *New.* ^{Continuation of proceedings}

30. The following Acts are repealed:

1. *The Magistrates Act.*

R.S.O. 1960, c. 226;

2.

(ii)

- | | |
|--------------------------|------------------------------------------------------------------|
| 1960-61,
c. 51; | 2. <i>The Magistrates Amendment Act, 1960-61.</i> |
| 1961-62,
c. 76; | 3. <i>The Magistrates Amendment Act, 1961-62.</i> |
| 1964, c. 57; | 4. <i>The Magistrates Amendment Act, 1964.</i> |
| R.S.O. 1960,
c. 201; | 5. <i>The Juvenile and Family Courts Act.</i> |
| 1960-61,
c. 42; | 6. <i>The Juvenile and Family Courts Amendment Act, 1960-61.</i> |
| 1961-62,
c. 67; | 7. <i>The Juvenile and Family Courts Amendment Act, 1961-62.</i> |
| 1964, c. 51; | 8. <i>The Juvenile and Family Courts Amendment Act, 1964.</i> |
| 1966, c. 75; | 9. <i>The Juvenile and Family Courts Amendment Act, 1966.</i> |
| 1967, c. 43,
repealed | 10. <i>The Juvenile and Family Courts Amendment Act, 1967.</i> |
- Commence-
ment 31. This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.
- Short title 32. This Act may be cited as *The Provincial Courts Act, 1968.*

CHAPTER 369

The Provincial Courts Act

1. In this Act,

Interpre-
tation

- (a) "judge" means a provincial judge appointed under this Act;
- (b) "Judicial Council" means the Judicial Council for Provincial Judges referred to in section 7;
- (c) "Minister" means the Minister of Justice and Attorney General. 1968, c. 103, s. 1, *amended*.

PART I

PROVINCIAL JUDGES

2. The Lieutenant Governor in Council on the recommendation of the Minister may appoint such provincial judges as he considers necessary. 1968, c. 103, s. 2.

Appoint-
ment of
judges

3.—(1) Every judge shall take and subscribe the following oath before a chief judge or a judge designated by him:

I,
do swear that I will truly and faithfully, according to my skill and knowledge, execute the several duties, powers and trusts of the Provincial Courts, so help me God.

and also the oath of allegiance as required by *The Public Officers Act*.

R.S.O. 1970,
c. 382

(2) The oath of office and oath of allegiance shall be transmitted forthwith to the Inspector of Legal Offices and shall be filed in his office. 1968, c. 103, s. 3.

Filing of
oaths

4.—(1) A judge may be removed from office before attaining retirement age only for misbehaviour or for inability to perform his duties properly and only if,

Removal
for cause

- (a) the circumstances respecting the misbehaviour or inability are first inquired into; and
- (b) the judge is given reasonable notice of the time and place for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and of cross-examining the witnesses and of producing evidence on his own behalf.

Inquiry

(2) For the purpose of making an inquiry under subsection 1, the Lieutenant Governor in Council may appoint one or more judges of the Supreme Court who shall make the inquiry and report thereon, and a judge so appointed has all the powers that may be conferred upon a commissioner under *The Public Inquiries Act*.

R.S.O. 1970,
c. 379

Order for
removal

(3) An order removing a judge from office under this section may be made by the Lieutenant Governor in Council and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next ensuing session. 1968, c. 103, s. 4.

Retirement

5.—(1) Every judge shall retire upon attaining the age of sixty-five years. 1968, c. 103, s. 5 (1).

Idem

(2) Notwithstanding subsection 1, a judge appointed as a full-time magistrate after the 1st day of July, 1941 and before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years. 1968, c. 103, s. 5 (2), *amended*.

Idem

(3) Notwithstanding subsection 1, a judge appointed as a full-time magistrate on or before the 1st day of July, 1941, shall retire upon attaining the age of seventy-five years.

Reappoint-
ment

(4) Upon attaining an age for retirement under subsection 1 or 2, a judge may be reappointed to hold office during pleasure but shall not hold office after attaining the age of seventy-five years. 1968, c. 103, s. 5 (3, 4).

Resignation

6. A judge may at any time resign his office in writing, signed by him and delivered to the Minister. 1968, c. 103, s. 7.

Judicial
Council

7.—(1) The Judicial Council for Provincial Judges is continued and shall be composed of,

- (a) the Chief Justice of Ontario, who shall be chairman;
- (b) the Chief Justice of the High Court;
- (c) the chief judge of the Provincial Courts (Criminal Division);
- (d) the chief judge of the Provincial Courts (Family Division);
- (e) the Treasurer of the Law Society of Upper Canada; and
- (f) not more than two other persons appointed by the Lieutenant Governor in Council. 1968, c. 103, s. 7 (1); 1970, c. 38, s. 1, *amended*.

Staff

R.S.O. 1970,
c. 386

(2) Such officers and employees of the Judicial Council as are considered necessary shall be appointed under *The Public Service Act*.

(3) A majority of members of the Judicial Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Judicial Council. 1968, c. 103, s. 7 (2, 3).

Quorum

8.—(1) The functions of the Judicial Council are,

Functions

- (a) at the request of the Minister, to consider the proposed appointments of provincial judges and make a report thereon to the Minister;
- (b) to receive complaints respecting the misbehaviour of or neglect of duty by judges or the inability of judges to perform their duties; and
- (c) to take such action to investigate complaints as it considers advisable including the review thereof with the judge where appropriate, and to make such recommendations to the Minister with respect thereto as it sees fit.

(2) The chairman may transmit such complaints as he considers appropriate to the chief judge of the Provincial Courts (Criminal Division) or the chief judge of the Provincial Courts (Family Division).

Transmission to chief judge

(3) The Judicial Council may recommend to the Lieutenant Governor in Council that an inquiry be held under section 4.

Recommendation of inquiry

(4) The proceedings of the Judicial Council shall not be public, but it may inform and advise the Minister respecting matters that it has investigated or reviewed.

Advising Minister

(5) The Judicial Council has all the powers that may be conferred upon a commissioner under *The Public Inquiries Act*.

Powers R.S.O. 1970, c. 379

(6) No action or other proceeding for damages shall be instituted against the Judicial Council or any member or officer thereof or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his duty. 1970, c. 38, s. 2.

Liability for damages

9.—(1) Every judge has jurisdiction throughout Ontario and,

Jurisdiction

- (a) shall exercise all the powers and perform all the duties conferred or imposed upon a provincial judge by or under any Act of the Legislature or of the Parliament of Canada;
- (b) has all the power and authority vested by or under any Act of the Legislature in a magistrate, two justices of the peace sitting together or a juvenile and family court or a judge thereof;
- (c) subject to subsection 2, may exercise all the powers and perform all the duties conferred or imposed upon a

magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada;

- (d) is *ex officio* a justice of the peace and commissioner for taking affidavits. 1968, c. 103, s. 9 (1).

Idem

1953-54,
c. 51 (Can.)

(2) A judge shall not exercise the powers or perform the duties conferred or imposed upon a magistrate under Part XVI of the *Criminal Code* (Canada) unless,

- (a) he is or has been a member of the bar of one of the provinces of Canada;
- (b) he has acted as a provincial judge for a period of five years; or
- (c) he was acting as a full-time deputy magistrate, magistrate or judge of the juvenile and family court immediately before the 2nd day of December, 1968.

and he is so designated by the Lieutenant Governor in Council. 1968, c. 103, s. 9 (2); 1970, c. 38, s. 3, *amended*.

Chief
Judge

10.—(1) The Lieutenant Governor in Council may appoint a judge as chief judge of the provincial courts (criminal division) and a judge as chief judge of the provincial courts (family division).

Alternates

(2) The Minister may designate judges to act in the place of a chief judge for all purposes during his illness or absence.

Duties

(3) Each chief judge shall have general supervision and direction over arranging the sittings of his courts and assigning judges for hearings in his courts, as circumstances require.

Idem

(4) In the arrangement of the courts and the assignment of judges thereto, regard shall be had to,

- (a) the desirability of rotating the judges; and
- (b) the greater volume of judicial work in certain of the counties and districts. 1968, c. 103, s. 10.

Senior
judges

11. The Minister may designate a judge to be senior judge of such provincial courts (criminal division) or provincial courts (family division), or both, as are named in the designation. 1968, c. 103, s. 11.

Other
employment

12.—(1) Subject to subsection 2, unless authorized by the Lieutenant Governor in Council, a judge shall not practise or actively engage in any business, trade or occupation but shall devote his whole time to the performance of his duties as a judge.

(2) A judge, with the previous consent of the Minister, may act Idem as arbitrator, conciliator or member of a police commission. 1968, c. 103, s. 12.

13. *The Public Authorities Protection Act* applies to judges in the same manner and to the same extent as it applies to justices of the peace, without limiting any other defences available to judges under the law in respect of acts done in the execution of their duties. 1968, c. 103, s. 13. Application of R.S.O. 1970, c. 374

PART II

PROVINCIAL COURTS (CRIMINAL DIVISION)

14. There shall be in and for every county and district a court of record to be styled, Provincial courts (criminal division)

(a) in counties, the "Provincial Court (Criminal Division) of the County (or Judicial District or United Counties) of (*naming the county etc.*)";

(b) in districts, the "Provincial Court (Criminal Division) of the District of (*naming the district*)",

presided over by a judge. 1968, c. 103, s. 14, *amended*.

15. A judge shall exercise the powers and perform the duties vested in him as a magistrate, provincial magistrate or one or more justices of the peace under section 9 sitting in a provincial court (criminal division). 1968, c. 103, s. 15. Judges preside

16. The judges of the provincial court (criminal division) of each county or district may hold sittings at any place in the county or district designated by the chief judge of the provincial courts (criminal division). 1968, c. 103, s. 16. Sittings

PART III

PROVINCIAL COURTS (FAMILY DIVISION)

17.—(1) There shall be in and for every county and district a court of record to be styled, Provincial courts (family division)

(a) in counties, the "Provincial Court (Family Division) of the County (or Judicial District or United Counties) of (*naming the county etc.*)";

(b) in districts, the "Provincial Court (Family Division) of the District of (*naming the district*)",

presided over by a judge.

- Jurisdiction** (2) Each provincial court (family division),
- R.S.C. 1952,
c. 160**
- (a) is a juvenile court for the purpose of dealing with juvenile delinquents so soon as the *Juvenile Delinquents Act* (Canada) is proclaimed in force in the county or district for which it was established, and such court has all the powers vested in a juvenile court under that Act;
 - (b) has power to try any child charged with an offence against the laws of Ontario; and
 - (c) has power to deal with all cases where jurisdiction is conferred by any Act upon a juvenile court or a judge thereof or upon a juvenile and family court or a judge thereof or upon a provincial court (family division). 1968, c. 103, s. 17, *amended*.
- Judge
presides** **18.** A judge shall exercise the powers and perform the duties vested in him as a judge of the juvenile and family court under section 9 sitting in a provincial court (family division). 1968, c. 103, s. 18.
- Sittings** **19.** The judges of the provincial court (family division) of each county or district may hold sittings at any place in the county or district designated by the chief judge of the provincial courts (family division). 1968, c. 103, s. 19.
- Control of
officers
and staff** **20.** The officers and members of the staff of a provincial court (family division) shall act in accordance with the directions of the presiding judge of the court. 1968, c. 103, s. 20.
- Detention
and
observation
home** **21.—(1)** A detention and observation home may be established, maintained and operated as a part of a provincial court (family division).
- Status** (2) The superintendent and assistant superintendent of a detention and observation home shall be deemed to be officers of the court of which the home is a part. 1968, c. 103, s. 21.
- Detention
homes** **22.** The Minister may declare any place, house, home or institution a detention home within the meaning of the *Juvenile Delinquents Act* (Canada). 1968, c. 103, s. 22.
- Diagnostic
clinic** **23.—(1)** A diagnostic clinic may be established, maintained and operated as part of a provincial court (family division).
- Professional
persons
status** (2) Professional persons appointed for the purposes of a diagnostic clinic shall be deemed to be officers of the court of which the clinic is a part. 1968, c. 103, s. 23.
- Powers of
probation
officers** **24.** Every probation officer appointed for a provincial court (family division) has, while acting in the discharge of his duties, all the powers of a police constable. 1968, c. 103, s. 24.

25.—(1) A person entitled to alimony or maintenance under a judgment or order of the Supreme Court or a surrogate court may file a copy of the judgment or order in the provincial court (family division) having jurisdiction where the person ordered to pay the alimony or maintenance resides, and, when so filed, it shall be enforced in the same manner as an order made in that court under *The Deserted Wives' and Children's Maintenance Act*. Alimony and maintenance orders
R.S.O. 1970, c. 128

(2) A person entitled to maintenance under a judgment or order of the Supreme Court or a surrogate court within the meaning of subsection 1 includes a child entitled to maintenance under the judgment or order. 1968, c. 103, s. 25. Interpretation

26.—(1) The Rules Committee of the Provincial Courts (Family Division) is established and shall be composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members as chairman. Rules of procedure

(2) A majority of the members of the Rules Committee constitutes a quorum. Quorum

(3) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee of the Provincial Courts (Family Division) may make rules regulating any matters relating to the practice and procedure of the courts, including, without limiting the generality of the foregoing, Rules

- (a) regulating the duties of officers of the courts;
- (b) regulating the costs of proceedings in the courts;
- (c) prescribing and regulating the proceedings under any Act that confers jurisdiction upon the courts or a judge sitting therein;
- (d) governing the payment, transfer or deposit into, or in, or out of, any court of any money or property, or to the dealing therewith;
- (e) allowing for service out of Ontario.

(4) Where provisions in respect of practice or procedure are contained in any Act, rules may be made adding to or modifying such provisions to any extent that is considered necessary for the equitable despatch of the business of the court unless that power is expressly excluded. 1968, c. 103, s. 26. Idem

PART IV

GENERAL

27.—(1) There shall be a clerk for each provincial court (criminal division) and each provincial court (family division) who shall act under the direction and supervision of the judge. Clerk

Officers and
employees
R.S.O. 1970,
c. 386

(2) Such officers, clerks and employees as are considered necessary shall be appointed for provincial courts under *The Public Service Act*. 1968, c. 103, s. 27.

Regulations

28.—(1) The Lieutenant Governor in Council may make regulations,

- (a) specifying the returns to be made by judges and chief judges;
- (b) providing for the safe-keeping, inspection and destruction of books, documents and papers of provincial courts and judges;
- (c) fixing the remuneration of judges;
- (d) providing for the benefits to which judges are entitled, including,
 - (i) leave of absence and vacations;
 - (ii) sick leave credits and payments in respect of such credits;
 - (iii) pension benefits for judges and their widows and surviving children,

and for the transfer or other disposition of benefits in respect thereof to which persons appointed as judges under this Act were entitled under *The Public Service Act* or *The Public Service Superannuation Act* at the time of their appointment under this Act;

- (e) providing for the appointment and employment of stenographic reporters to take down evidence before judges, and fixing their fees, expenses and other forms of remuneration;
- (f) prescribing the duties of chief judges;
- (g) prescribing the functions of and providing for the management of detention and observation homes, detention homes, and diagnostic clinics under this Act;
- (h) prescribing the duties of the officers and employees of the staffs of provincial courts or of any class of such officers or members;
- (i) providing for a system of statistical records relating to provincial courts;
- (j) respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of this Act.

R.S.O. 1970,
cc. 386, 387

Idem

(2) Any regulation made under subsection 1 may be general or particular in its application. 1968, c. 103, s. 28.

PROVINCIAL COURTS ACT

R.S.O. 1970, Chap. 369

Amended 1976, c. 85, s. 23; proclaimed in force July 1, 1977

Amended 1977, c. 46; in force November 4, 1977

Amended 1978, c. 2, s. 86; in force March 31, 1978

*Administered by the Ministry of the Attorney General***Generally**

1972, c. 1, ss. 1 and 2 provide as follows:

1. The word "Department" where it occurs in the name of a present department of the Government in any Act or regulation is struck out and "Ministry" is substituted therefor.

2. The words "department" and "departments" where they occur in any Act or regulation and refer to a present department or present departments of the Government are struck out and "ministry" and "ministries" are substituted therefor, as the case may be.

1976, c. 85, s. 24 provides as follows:

24. This Act is repealed on a day that is three years after it comes into force.

Section 10

Subsec. (2) repealed and the following substituted 1977, c. 46, s. 1:

(2) The Lieutenant Governor in Council may appoint a judge as associate chief judge of the provincial courts (criminal division) and a judge as associate chief judge of the provincial courts (family division).

Section 14For cases 1930 to 1971, see *Ontario Statute Annotations*, R.S.O. 1970 edition.**Section 17**

Subsec. (1) amended 1976, c. 85, s. 23 by inserting after "district" in the first line "except the Judicial District of Hamilton-Wentworth".

Sections 21 to 23

1977, c. 22, s. 1(4) provides as follows:

(4) The administration of sections 21 to 23 and clause *g* of subsection 1 of section 28 of *The Provincial Courts Act* is assigned and transferred to the Minister of Community and Social Services and a reference in those sections to the Minister shall be deemed to be a reference to the Minister of Community and Social Services.

Section 25For cases 1930 to 1971, see *Ontario Statute Annotations*, R.S.O. 1970 edition.

Repealed 1978, c. 2, s. 86(1) (subject to subsec. (2)).

1978, c. 2, s. 86(2) provides as follows:

(2) Every order or judgment filed under section 25 of *The Provincial Courts Act* before subsection 1 comes into force shall be deemed to have been filed under section 27 of this Act with the request therein mentioned.

PROVINCIAL COURTS ACT—Continued**Section 25—Continued**

Subsec. 1 *Peroff v. Peroff et al.*, [1972] 1 O.R. 170 (Co.Ct.).

This section confers jurisdiction on a Judge of the Provincial Court (Family Division) the power to enforce an order for interim alimony.

[*Re LaPierre and LaPierre*, [1971] 1 O.R. 562 in effect overruled]

Section 26

Subsec. (3)(ba) new 1977, c. 46, s. 2(1):

(ba) providing for the taxation of costs and prescribing tariffs therefor.

Subsec. (5) new 1977, c. 46, s. 2(2):

(5) Section 82 of *The Judicature Act* applies to the provincial court (family division) and to judges presiding in the court.

Section 28

1977, c. 22, s. 1(4) provides as follows:

(4) The administration of sections 21 to 23 and clause *g* of subsection 1 of section 28 of *The Provincial Courts Act* is assigned and transferred to the Minister of Community and Social Services and a reference in those sections to the Minister shall be deemed to be a reference to the Minister of Community and Social Services.

